

THE LAW OF
CARRIAGE BY RAILWAY.

THE
LAW OF CARRIAGE
BY RAILWAY.

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P R E F A C E

TO THE FIFTH EDITION.

WHEN the Great War began the Fourth Edition of this book was in the press. This is not the place in which to describe the prodigious effect of the railways on the War, but a word may be said on the effect of the War on the railways of this country. Long before the Armistice, it became quite clear that the railways could not be carried on under the laws then in force. The existing Acts of Parliament made it impossible for the companies to raise their charges above the prescribed maxima. On the other hand the enormous rise in wages and in the prices of coal, steel, and other essential commodities was more than sufficient to absorb all possible earnings of the railways. So long as the Government control of the railways continued, the loss was borne by the country, and the taxpayer has had to provide dividends for the shareholders.

It is intended that after August, 1921, this control shall cease. The Ministry of Transport Act, 1919, has created a new Government Department to which most of the duties of the Board of Trade and of other Departments with regard to railways have been transferred, and provision has been made for the continuation of the control till August next. Other features of the situation are the claim of Labour (which cannot be ignored) to have a substantial share in the management of the railways, and the further demand that the State shall acquire the ownership of the railways. It is evident that there must be fresh legislation dealing with the whole subject before the

control comes to an end, or chaos will ensue, and the companies will be unable to carry on their business. But whatever changes are made in management or ownership, or in the power of charging, the existing principles of law governing the relations between the railway companies and their customers will probably be affected very slightly indeed. The explanation of these principles, of the Law of Carriers as affecting railway companies, is the aim of this book. In the Fifth Edition it will be found that the Chapter on Rates, etc., has been transferred to Part III., in which some notice has been taken of the effect of the War on railways, and which will have (most probably) to be re-written in the next edition. It is hoped that the reader will find that Part I. and Part II., which remain unaltered in form, have been satisfactorily brought up to date.

The author desires to thank his friend, Mr. W. Valentine Ball, O.B.E., of Lincoln's Inn, lecturer at the London School of Economics, for some useful notes.

H. W. D.

LINCOLN'S INN,

March, 1921.

PREFACE

TO THE SECOND EDITION.

THE object of this book is to present the law on the subject with which it deals in a concise form suitable for a student's reading. It is a re-casting of notes made by the Author for Lectures delivered at the London School of Economics and Political Science to students almost all of whom were in the employment of the great railway companies. The book does not pretend to be a complete digest of railway law, nor to compete with any of the existing comprehensive works on the subject. It is merely a handbook, which it is hoped will enable railway men to gain some knowledge of the law governing the ordinary relationship between the carrier and his customer ; and in their interests legal technicalities have been avoided as far as possible. The fact that a second edition is required shows that the book meets a certain demand. The Author has reason to believe that this demand comes to some extent from the legal profession, who have found a use for a small book on the subject. In preparing this edition, therefore, the Author has tried to make the book more useful to the profession by citing a number of addi-

tional cases. Short chapters on Rates, Facilities, and Preference have been added; and in the Appendix the General Conditions for the carriage of goods and the Bye-Laws in use by the companies have been inserted. It is hoped that the book will be found up-to-date.

The Author desires to thank his friend, Mr. WILLIAM DULLEY, of Lincoln's Inn, for much help in revising and in drawing up and verifying the Table of Cases.

H. W. D.

4, ELM COURT TEMPLE, E.C.,

February, 1909.

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THE LAW OF CARRIAGE BY RAILWAY.

PART I. CARRIAGE OF GOODS.

CHAPTER I.

THE COMMON CARRIER.

IN order properly to understand the law which governs the relation between a railway company on the one side and a consignor of goods on the other, it is necessary to go back to a time when railways did not exist. The railway is a thing of yesterday; but there have been carriers of goods for many centuries, and long before the first railway was made there was a well-defined system of law relating to carriers by land. The first railway company was, in the eye of the law, merely a new sort of carrier; they had to take the law as they found it, and were subject to the same rules as governed carriers whose only instrument of locomotion was the horse. And although Parliament has passed many Acts relating to railway companies, the law is still the old carriers' law, except where it has been altered by those Acts.

Anyone employed to carry an article from one place to another is in a sense a carrier, but he is not necessarily what is known in law as a common carrier. A "common" carrier is one who makes carrying his business—who holds himself out to the world as prepared for hire to transport from place to place the goods of any person wishing to employ him. He may also be described as a "public"

carrier. It is not essential that he should hold himself out as ready to carry goods of all sorts. He may profess to carry only small parcels, and then he could not be required to carry large and bulky things. He may profess to carry only one description of goods, as, for example, corn, in which case he would be a common carrier of corn, and could not be required to carry anything else. Again, he probably professes to carry goods only to certain places, or, perhaps, even only between two particular places. If this were the case, he would be entitled to refuse goods offered to him for carriage to places to which he did not profess to extend his operations. The essential part of the definition of a common carrier is that he holds himself out to the public as being ready to carry for anyone whatsoever who wishes to engage his services and is prepared to pay his charges. If he is a common carrier he must not pick and choose or discriminate between would-be customers. A man who undertook to carry goods only for certain persons would not be a common carrier. In the words of Baron Alderson: "Everyone who undertakes to carry for anyone who asks him is a common carrier. The criterion is, whether he carries for particular persons only, or whether he carries for everyone. If a man holds himself out to do it for everyone who asks him, he is a common carrier; but if he does not do it for everyone, but carries for you or me only, that is a matter of special contract" (a). Where a man carries for payment but reserves to himself the right of accepting or rejecting offers of employment at his own discretion, he is not a common carrier (b). If he is a common carrier, he may not without lawful excuse refuse to carry goods offered to him by any person who is ready to pay his reasonable charges, provided the goods are such as he professes to carry, and provided his business extends to the place to which he is required to carry them. So important is this rule, that the law considers a common carrier guilty of a criminal offence who

(a) *Ingate v. Christie* (1850), 3 Car. & K. 61.

(b) *Belfast Ropework Co. v. Bushell*, [1918] 1 K. B. 210,

without lawful excuse refuses to accept goods offered to him, and he is indictable therefor as for a misdemeanour (*c*). This remedy may now be said to be obsolete, but actions are occasionally brought against common carriers for damages for wrongfully refusing to carry goods. Thus, a railway company has been successfully sued for refusing to carry for another carrier "packed parcels," *i.e.*, parcels containing a number of smaller parcels collected from various persons by the consigning carrier, and forwarded for distribution by his agent to the persons to whom addressed. A carrier may have a lawful excuse for refusing, and therefore a good defence to such an action. Thus, in an old case, it was held that a carrier is justified in refusing to carry if his vehicle is full. With respect to a very great many kinds of goods, railway companies are common carriers; therefore a railway company cannot lawfully refuse to carry such goods when they have facilities for so doing. This is the common law; but, as will be seen later (*d*), Parliament has made a provision to the same effect.

No carrier, however, is bound to accept goods for carriage unless the person offering the goods is at the same time ready and willing to pay the full price for their carriage according to the usual scale of that carrier's charges, where such scale exists. The charges must, however, be reasonable; and if there be no scale, it is sufficient to tender a reasonable sum. If the carrier demand an unreasonable sum, such demand is equivalent to a refusal to carry; and if the unreasonable sum so demanded be paid under protest, the excess may be recovered from the carrier. In the case of railway companies, maximum rates are fixed for most kinds of goods under the authority of Parliament, and, when this is so, of course the company cannot charge more (*e*). Every railway company is obliged to keep at each station books showing every rate in force for goods traffic from that station, and to allow such books to be

(*c*) See per Patteson, J., *Pozzi v. Shipton* (1838), 1 Per. & Dav. 4.

(*d*) See p. 219, *post*.

(*e*) See p. 235, *post*.

inspected by any person without the payment of any fee (*f*). These rates are often less than the maxim they are allowed to charge, but they cannot charge more than the rates shown in such books.

The most remarkable feature of the law relating to common carriers is that which makes the carrier an insurer of the safe delivery of the goods he undertakes to carry. The general principle of the common law is usually stated in this way : A common carrier is an insurer of the goods which he contracts to carry, and is liable for all loss of or injury to those goods, unless such loss or injury is caused by the act of God, or by the King's enemies, or is the consequence of inherent vice in the thing carried.

In most cases a bailee (or person entrusted with the goods of another) is not liable for loss or injury to the goods while in his charge, unless the loss or injury were due to his negligence. "Negligence" means the omission to do something which in the circumstances a reasonable and careful man would do, or the doing of something which in the circumstances a reasonable and careful man would not do. It is the omission to take that amount of care which it is the legal duty of a person to take. The ordinary bailee is only bound to take all reasonable care of the other person's goods. If the goods are lost or destroyed without any negligence on his part, he is under no liability ; but the burden is upon him to prove that the damage was not due to his negligence, and if he fail in such proof he is held responsible. A carrier who is not a common carrier is not liable to compensate the owner of goods which are lost or damaged while in his custody, unless he is guilty of negligence (*g*). But it is his duty to take reasonable and proper care of the goods and if the goods are lost or damaged the burden is on him to show that he performed that duty and that the loss or damage was not caused by his negligence (*h*).

The liability of a common carrier, however, is not limited

(*f*) Regulation of Railways Act, 1873, s. 14.

(*g*) *Watkins v. Cottell* (1915), 32 T. L. R. 91.

(*h*) *Travers v. Cooper*, [1915] 1 K. B. 73.

to negligence. He may be liable for loss or damage even in cases where he has taken every reasonable care and precaution. For example, he is liable where the goods are stolen from his possession without any fault on his part, even where he is robbed with violence ; he is liable where they are destroyed by fire not caused by his negligence or that of any person over whom he has control ; he is liable where they are lost or injured by the negligence or wrongful act of some stranger, or by an inevitable accident.

Since, then, the common carrier is liable even where no negligence can be proved against him or his servant, it is clear that his responsibility for the safety of the goods is a heavy one. It is his duty to carry the goods safely, and to deliver them up in safety to the person to whom they are consigned. If he fail in this duty he must make pecuniary compensation for the loss caused to the owner, even when he is in no way to blame for such failure.

As has been mentioned, there are three cases in which the common carrier is not liable for loss or injury ; but when the question of liability is raised, the burden of proof is upon the carrier to show that the facts bring him within one of the exceptions. The first of these is where the loss or injury is caused by the " act of God." This old-fashioned but expressive phrase in its legal signification means some elemental force of nature which was directly the cause of the injury, and which could not have been foreseen, or, if foreseen, could not have been guarded against by any ordinary or reasonable precaution. " A common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively, without human intervention, and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him " (i). Loss or damage is seldom caused to goods in transit on land by the act of God, as thus defined ; for care must be taken to protect the goods from all the ordinary forces of nature. Thus, rain and frost are forces of nature which may do much harm

(i) *Nugent v. Smith* (1876), 1 C. P. D. 423.

to certain classes of goods, but they constantly occur and must be foreseen and guarded against by the carrier. If the goods are injured by such ordinary forces the common carrier is liable, for it is his duty to protect the goods from such injury (*k*). It is only against the extraordinary that he is not bound to take precautions. A horse has been killed by lightning while being carried in an ordinary horse-box upon a railway. Such an accident may some day happen again, but it is something quite out of the ordinary, something against which the carrier is not bound to guard. It is probably within the bounds of possibility to protect horse-boxes from lightning, but it would be ridiculous to expect railway companies to do so. In the words of Chief Justice Cockburn: "All that can be required of the carrier is that he shall do all that is reasonably and practically possible to insure the safety of the goods. If he uses all the known means to which prudent and experienced carriers ordinarily have recourse, he does all that can be reasonably required of him; and if, under such circumstances, he is overpowered by storm or other natural agency, he is within the rule which gives immunity from the effects of such *vis major* as the act of God. I do not think that because someone may have discovered some more efficient method of securing the goods which has not become generally known, or because it cannot be proved that if the skill and ingenuity of engineers or others were directed to the subject something more efficient might not be produced, that the carrier can be made liable" (*l*). In *Briddon v. The Great Northern Ry. Co.* (*m*) the plaintiff sent certain cattle by the defendants' railway from Huntingdon to Nottingham. There was an extraordinary fall of snow that day, so that part of the line became blocked. The goods train, to which the two trucks containing the cattle were attached, was shunted at an intermediate station, and the engine was used as additional power to take on a passenger train

(*k*) See per Lord Buckmaster in *L. & N. W. Ry. Co. v. Richard Hudson & Sons, Ltd.*, [1920] A. C. at p. 343.

(*l*) *Nugent v. Smith, sup.*

(*m*) (1858), 28 L. J. Ex. 51.

through the snow. Great and successful efforts were made to keep the passenger trains running, but no extraordinary efforts were made to forward the goods traffic. As a result, the train containing the plaintiff's cattle was detained at the station where it had been shunted for thirty hours, and the beasts suffered greatly from cold and want of food. The plaintiff sued the company for damages for the injury caused to the cattle and for loss of market. The company pleaded that the damage was caused by the act of God, that is, by an extraordinary fall of snow. The jury found that the delay was not owing to any fault on the part of the company, but was the unavoidable result of the state of the line, and that under the circumstances the company had done all that they were bound to do. The Court held that the company were not bound in respect of goods to make the extraordinary efforts and incur the additional expense which the forwarding of the passenger trains had cost them; and judgment was given for the defendants.

The second exception to the rule as to the liability of the common carrier is where loss or injury is caused by the King's enemies. The expression "the King's enemies" does not include rebels or rioters or robbers; it means the armed forces of a foreign power with which this country is at war. If goods are taken from a common carrier by such forces, or injured or destroyed by them, the carrier is not responsible to the owner for the loss. For example, during the Great War where goods in transit on a railway were destroyed by bombs dropped from German aircraft, and where goods were sent to the bottom of the sea on a company's steamship being torpedoed by a German submarine; in neither case were the company liable under the common law for the value of the goods. The carrier, however, is only protected where he could not by the use of proper care have avoided the goods falling into the enemy's power and when he has duly performed his contract of carriage. Where the carrier breaks his contract, as by unnecessarily deviating from the agreed course or where he neglects warnings and takes unnecessary risks,

he is not protected if the goods are destroyed by the King's enemies through such default (n).

The third exception is where loss or injury is caused by "inherent vice" in the thing carried. This means some fault or defect latent in the thing itself, which by its development tends to the injury or destruction of the thing carried. It would be contrary to reason for a carrier to be deemed an insurer against loss from such a cause. Thus, he is not liable for injury to fruit or other perishable goods from heating or natural decay during transit, provided he has taken all reasonable care of the goods according to their nature, as, for example, seeing they have proper ventilation. Again, the carrier is not responsible for diminution of liquids caused by evaporation or leakage, which no ordinary and reasonable care on his part could prevent; nor is he responsible for destruction by spontaneous combustion. A defect in a thing may be harmless as long as the thing is not moved, but it may cause injury as soon as the thing is carried from place to place even though the carrier uses all reasonable care; for injury caused by such a defect the carrier is not liable.

The best examples, however, of inherent vice are supplied by animals. Animals cannot be carried by railway except under conditions which tend to produce fright and panic in them. Carriers must take all reasonable precautions to guard against the consequences of such fright, but they are not bound to do more; and if an animal takes fright in an unusual degree, and so becomes unmanageable, and is injured without any want of reasonable care on the part of the carrier, the carrier is not liable. In *Blower v. The Great Western Ry. Co.* (o) the plaintiff delivered a bullock to the defendants to be conveyed from a station near Monmouth to Northampton. The bullock was loaded to the satisfaction of the plaintiff in the usual and proper way, in a truck of the description ordinarily used by the company for such animals. In the course of the journey, however,

(n) See *Morrison v. Shaw Saville, etc., Co., Ltd.*, [1916] 2 K. B. 784.
(o) (1872), L. R. 7 C. P. 655.

it was discovered that the bullock had escaped from the truck, and its carcase was afterwards found on the side of the railway. The plaintiff sued for the value of the bullock, and at the trial it was found as facts that its escape was wholly attributable to the efforts and exertions of the animal itself; that neither its death nor its escape was due to any negligence on the part of the company; and that the truck was in every respect proper and reasonably sufficient for the purpose for which it was used. On these facts it was decided that the company were not liable. The Court held that the company were bound to provide trucks sufficient to retain cattle under the ordinary incidents of a railway journey, but their liability did not extend further. Here the escape of the bullock arose from no other cause than its own inherent vice, or restiveness, or frenzy, and for injury from such a cause the company were not liable.

In *Kendall v. The London and South Western Ry. Co.* (p) a horse was taken to Waterloo Station and delivered to the company to be carried to Ewell. No accident happened to the train, nor anything likely to alarm the horse, which was a quiet animal accustomed to travel by rail; but at the end of the short journey the horse was found to have sustained severe injuries. The plaintiff accordingly sued the company in respect of those injuries, but was unable to show any negligence. Baron Bramwell said: "There is no doubt in this case that the horse was the immediate cause of its own injuries. It slipped, or fell, or kicked, or plunged, or in some way hurt itself. If it did so from no cause other than its inherent propensities, 'its proper vice,' that is to say, from fright, or temper, or struggling to keep its legs, the defendants are not liable. But if it so hurt itself from the defendants' negligence, or any misfortune happening to the train, though not through any negligence of the defendants, as, for instance, from the horse-box leaving the line owing to some obstruction maliciously put on it, then the defendants would, as

insurers, be liable. If perishable articles, say soft fruit, are damaged by their own weight and the inevitable shaking of the carriage, they are injured through their own intrinsic qualities. If through pressure of other goods carried with them, or by an extraordinary shock or shaking, whether through negligence or not, the carrier is liable." And as the Court came to the conclusion that the horse was injured entirely by its own acts, without any fault on the part of the company, the plaintiff failed in his action.

In *Lister v. Lancashire and Yorkshire Ry. Co. (q)* the plaintiff employed the defendants as common carriers to carry an engine from his yard to a neighbouring town on their line. The engine was on wheels with shafts to draw it, and had been purchased by the plaintiff second-hand a few months before. The defendants sent two men, two boys and two horses for the purpose; and the men and boys were competent, and the horses proper for the purpose. The horses were harnessed to the engine, which was drawn out of the yard. Whilst they were proceeding along the road one of the shafts broke, the horses took fright, became unmanageable and upset the engine, which was damaged in consequence. The shaft was rotten at the point where it broke, but this was not known either to the plaintiff or the defendants, and could not have been discovered by any ordinary examination. The plaintiff sued the railway company for damages for the injury to the engine. The Court held that the company were not liable, for the thing was being carried in the ordinary way, and the company had taken all reasonable precautions, but the accident had happened from the unfitness of the thing for that mode of carriage. The unfitness for carriage, although not known to either party, was inherent vice within the meaning of the established rule.

From these cases it will be seen that if the cause of destruction or injury comes from something in the goods themselves which the carrier cannot be reasonably expected to foresee or to guard against, or from the ordinary wear

and tear and chafing of the goods, which cannot be avoided if the goods are carried in the ordinary way, and which is in no way due to negligence on the carrier's part, the carrier is not responsible for the injury.

There is also another case in which the common carrier is not responsible ; that is, where goods are injured through the fault of the consignor himself. It would be unreasonable if a consignor could make an innocent carrier pay where loss was caused entirely by his own fault. For example, where goods are liable to injury in transit unless they are protected by packing, it is the duty of the consignor to pack them properly. Damage arising from neglect of this duty without any fault on the carrier's part is not damage for which the carrier is liable (*r*). Again, if the real nature of the goods is concealed from the carrier, so that he has no opportunity of exercising unusual care where the peculiar nature of the goods so requires, he is only bound to use such ordinary care as the goods seem to require, and if he does so he is not liable for damage due to his not using extraordinary care.

The above is a sketch of the liability of the common carrier according to the ancient custom or common law of England. Railway companies are common carriers, and "all the decisions upon the law of carriers are applicable and have been applied to railway companies, except where the law has been expressly modified by Act of Parliament. These decisions clearly establish that railway companies are bound to carry according to their profession, but not otherwise, all persons, animals and goods offered to them for carriage ; and they carry passengers' luggage, animals and goods as insurers" (*s*).

But no Act of Parliament compels a railway company to carry any goods as common carriers, therefore there is nothing in law to prevent a company from refusing to carry any particular goods as insurers (*t*).

(*r*) See p. 59, *post*.

(*s*) Chitty on Contracts, 16th ed. p. 505.

(*t*) *Smith & Sons v. L. & N. W. Ry. Co.* (1918), 120 L. T. 273.

The relationship between the consignor and the common carrier, from which the wide liability of the latter arises, depends on contract, but not upon any express contract. It depends merely on the fact of the common carrier in the ordinary course of his business accepting the goods for carriage. From that fact the contract is implied with all its incidents. There is, however, nothing in law to prevent a consignor and a common carrier from making a special contract as to the carriage of goods ; and, if such a contract is made, the relationship between them will be controlled by the special contract. The common law liability is often varied by such contract ; but, except in so far as it is so varied the carrier continues to be under that liability. Thus, where the contract exempts the carrier from liability for loss from certain causes only, he remains liable for loss from other causes (*u*). There is generally a presumption that a carrier remains liable for loss of, or injury to, the goods owing to the negligence of himself or his servant ; and in order that a contract may free the carrier from liability for negligence, it must do so in explicit terms (*x*).

Now the responsibility laid on the shoulders of the common carrier by the common law is clearly a very heavy one. Naturally, therefore, carriers were eager, whenever they possibly could, to enter into agreements with their customers, so as to limit and cut down their responsibility as far as possible. The risk is particularly great and the responsibility especially heavy where small parcels containing articles of great value are entrusted to carriers ; and it was with regard to such parcels that carriers were most anxious to avoid their common law liability. Hence, a custom grew up amongst carriers of posting up notices at their receiving offices stating that they would not be responsible for certain classes of goods, or for goods above a certain value, unless the owner paid an additional sum beyond the usual charge by way of insurance. If it could

(*u*) See *Price & Co. v. Union Lighterage Co.*, [1904] 1 K. B. 412.

(*x*) See *Travers v. Cooper*, [1915] 1 K. B. 73.

be proved that such a notice came to the knowledge of the consignor at the time he handed over the goods to the carrier, the Courts presumed that he had consented to the terms and conditions of the notice ; and unless he had paid the additional charge the carrier would be able to escape a great part of his liability. If such a notice were posted up in a conspicuous position in the receiving office, and if the consignor had actually been in the office so that he had an opportunity of reading the notice, the Courts would generally decide that he must have seen the notice, and therefore it had come to his knowledge. If, having seen it, he did not choose to read it and so ascertain the conditions upon which he was sending his goods, that was his own fault. On this principle, no doubt, the Courts often held that such notices were binding upon persons who had never in fact seen them, and who knew nothing of their contents. These notices naturally gave rise to many disputes and to much litigation. Difficult questions frequently arose as to their meaning, and as to whether they had been brought to the knowledge of consignors. To remedy this state of things the Carriers Act of 1830 was passed.

CHAPTER | II.

THE CARRIERS ACT.

THE Carriers Act, 1830 (*a*), states in a preamble the circumstances in which it was passed. It says that bankers and other persons often sent parcels containing money, notes, jewellery, and other property of great value in small compass, by public conveyances, so that the property was very liable to depredation and the responsibility of the carrier very great ; also that the senders very often omitted to notify the value and nature of such parcels so as to give the carrier the opportunity of taking extra care to protect himself from this heavy responsibility ; and that it was difficult to prove that parties had knowledge of notices published by carriers limiting their responsibility, so that carriers were exposed to great and unavoidable risks and had sustained heavy losses.

The first section then goes on to provide that no common carrier by land shall be liable for the loss of, or injury to, any article of certain descriptions mentioned, contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger in any public conveyance, when the value of such article or articles contained in such parcel or package shall exceed the sum of 10*l.* ; unless, at the time of the delivery of the parcel or package at the office of the carrier, or to his servant, for the purpose of being carried or of accompanying the person of a passenger, the value and nature of such article or articles shall have been declared by the sender and an increased charge paid or agreed to be paid. This increased charge is a sum over and above the

(*a*) 1 Will. IV. c. 68. See Appendix, p. 243.

ordinary rate of carriage, which is to be paid as compensation for the greater risk and the greater care required (*b*).

Notice of such charges must be given by a notice in legible characters affixed in a public and conspicuous part of the carrier's office or place where parcels are received by him ; and all persons sending parcels containing property of the descriptions mentioned are bound by such a notice, without any further proof that it came to their knowledge. The carrier is also obliged, if required, to give a receipt for the parcel, containing an acknowledgment that the parcel is insured ; and if such a receipt is refused, the carrier is not entitled to any protection from the Act, but is liable as at common law, and may be required to refund any increased charge he has received (*c*).

The articles and property mentioned and to which these provisions apply are :—Gold or silver coin, gold or silver in a manufactured or unmanufactured state, precious stones, jewellery, watches, clocks or timepieces of any description, trinkets, bills, bank notes, orders, notes or securities for payment of money, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks, manufactured or unmanufactured and whether wrought up with other materials or not, furs and lace (*d*). It is obvious that this list is extremely antiquated and quite unsuited to the requirements of modern business. As long ago as 1867 a Royal Commission on railways reported that the list required revision, but nothing has since been done to bring it up to date.

Hence, with regard to such things contained in any parcel, the carrier is protected from all liability if the things in the parcel exceed 10*l.* in value, unless when the parcel is delivered to him the nature of its contents and their value is declared, and an increased charge is paid if demanded. This increased charge is in the nature of an insurance and to compensate the carrier for the extra risk he runs in carrying such articles.

(*b*) Sect. 2,

(*c*) Sect. 3,

(*d*) Sect. 1,

The Act applies to carriage by land only. Hence, where a carrier undertakes to carry goods to a place involving a transit partly by land and partly by sea the Act applies to the land part of the transit, but not to the sea part (e). And where goods are lost in such a transit, the carrier must prove that the loss occurred on the land part of the journey, in order to obtain the benefit of the Act. Thus, in *Ashton and Co. v. London and North Western Ry. Co.* (f) the plaintiff handed to the company three parcels, each containing furs exceeding 10*l.* in value, to be carried from London to Belfast. No declaration was made as to the contents of the parcels. The goods were never delivered and the company were unable to account for them beyond Euston Station. In an action by the plaintiff for the value of the furs the company relied upon the Act. They were, however, unable to prove that the goods were lost upon the land part of the transit or when or where they were lost. The House of Lords held that the Act only protects the carrier when goods are lost by land; and that as the company were unable to prove that the goods were lost by land they were not protected and were liable to pay their value.

When the declaration is made and the insurance demanded is paid, the carrier is responsible for the goods to the extent of the full liability of a common carrier at the common law. He is under the same liability where he fails to demand payment of the insurance, as the consignor is only bound to pay if required so to do by the carrier. If a parcel containing such goods to over 10*l.* in value is delivered for carriage without any declaration, the carrier is under no liability, not even if negligence can be proved, and not even to the extent of 10*l.* He is entitled to a declaration of the nature and value of a parcel, and where no such declaration is made he is entitled to all the protection of the Act, even if he neglects to post up the notice as required, but he cannot in case of such neglect lawfully

(e) *Le Conteur v. L. & S. W. Ry. Co.* (1865), L. R. 1 Q. B. 54.

(f) [1920] A. C. 84.

demand any additional charge by way of insurance (*g*). The notice must be posted at every office or house used by the carrier for receiving parcels. The carrier is entitled to an express declaration of the nature and value of the goods, whether they are delivered to him at a receiving office or elsewhere. For example, where the servant of the carrier calls by request at the house of the sender and the goods are there delivered the carrier will be entitled to the full protection of the Act if no express declaration be made. No particular form of declaration as to the nature and value of the contents of a parcel is necessary ; it is quite sufficient if the particulars are brought to the knowledge of the carrier with the intention of making a declaration and with sufficient clearness to enable him to fix the increased rate he is entitled to charge. But to deprive the carrier of the protection of the Act the declaration must be an express declaration both as to value and as to nature, intended to be a declaration ; and it is quite irrelevant that the contents of a parcel are obvious on examination (*h*).

It will be observed that the list of things named in the Act includes for the most part things of small bulk, but which may be of very great value. It also includes, however, some things which may be of great size, and yet, perhaps, be of small value, as, for example, large pictures. Cases of glass or china, too, may be of small value but of considerable size, and they require great care in handling from the extremely brittle nature of their contents. There is, however, this quality common to all the things in the list, that for one reason or another they require peculiar care on the part of the carrier. In most cases it is not difficult to say whether any particular thing comes within the Act, but in some cases it is by no means easy. In case of dispute, it is not a question of law for the judge but one of fact for the jury to decide whether or not the thing in question comes under the description of anything in the list.

(*g*) *Hart v. Baxendale* (1851), 6 Ex. 769.

(*h*) See *Doeg v. L. & N. W. Ry. Co.*, [1919], 1 K. B. 623.

The word "trinkets" has been found difficult to interpret. It has been defined to include things which are mainly and chiefly intended for ornament, though they may also be useful. A case containing a large number of miscellaneous fancy articles had been sent by the defendants, who were the well-known firm of Pickford & Co., as common carriers, and had been lost by them. The defendants did not dispute their liability to pay for some of the things, but denied their liability to pay for others, claiming the protection of the Act, as there had been no declaration and the things were worth far more than 10*l*. The Court decided that bracelets, shirt-pins, gilt rings, brooches, and tortoise-shell and pearl porte-monnaies were all "trinkets," but that German-silver matchboxes were not included in that term, being in no sense ornamental (*i*).

Again, it has been held that a lady's silk dress, silk hose and silk watch guards are all included in the term "silks"; that "glass" includes looking-glasses; and that "time-pieces" includes a ship chronometer.

In *Woodward v. London and North Western Ry. Co.* (*k*), the plaintiff, a carpet manufacturer, sued the company for damages for the loss of a parcel which had been placed in the van in the same train as that in which he was travelling as a passenger. The contents of the parcel were chiefly designs for carpets, painted by hand by skilled persons, and varying in value up to about 6*l*. each, the total value being 148*l*. The company defended the action on the ground that these designs were "paintings" within the meaning of the Carriers Act; and that as their nature and value had not been declared, and the value exceeded 10*l*., they were not liable for the loss. The jury found that the designs were not "paintings," and returned a verdict for the plaintiff for 148*l*. The Court held that the question whether the designs were "paintings" was a proper question for the jury, and that the jury were entitled to answer the question as they had done; the designs were not

(*i*) *Bernstein v. Baxendale* (1859), 28 L. J. C. P. 265.

(*k*) (1878), 3 Ex. D. 121.

paintings in the ordinary sense as works of art, but merely models to work by in a manufacturing process.

As to the word "lace," this only means hand-made lace ; it does not include machine-made lace, which is now-a-days made in such large quantities (*l*).

Again, the Act only applies to the things mentioned when they are contained in a "parcel or package." So that if any of the things were sent by a carrier loose, without any packing, the Act would have no application, and the carrier no protection. The carrier, however, would be justified in refusing to accept such articles without packing, as he is justified in refusing to accept any goods which are not properly packed if packing is reasonably necessary for their safety in transit (*m*). The words "parcel or package" seem to be wide enough to include anything of any size in which the owner chooses to pack his goods, *e.g.*, an ordinary furniture removal van. Thus, in *Whaite v. Lancashire and Yorkshire Ry. Co.* (*n*), the plaintiff sent a quantity of goods by the defendants' railway packed in a waggon. Amongst the things were ten oil paintings worth 100*l.* in all. The rest of the things in the waggon were articles not mentioned in the Act. The train in which this waggon was loaded met with a collision, and the pictures were entirely destroyed, while the other property was damaged to the extent of about 50*l.* The plaintiff sued the company for his loss, and it was contended on his behalf that the company were liable for the value of the pictures, as they were not in a parcel or package, and a waggon could not properly be described as either a parcel or a package. The Court, however, held that the waggon was "a package or parcel" within the meaning of the Act ; and therefore, as the pictures had not been declared, the company were protected from liability in respect of them, and were only liable for the damage to the other property.

It very often happens, as in the case just mentioned, that a parcel contains a variety of things, some of which

(*l*) 28 & 29 Vict. c. 94.

[(*m*) See p. 60, *post*.

(*n*) (1874), L. R., 9 Ex. 67.

are within the Act, and some not. This is especially so in the case of passengers' luggage carried by a railway company in the same train as the passenger. The Act expressly applies to such luggage in the same way as to other goods (o). If, then, a parcel of this sort, which has not been declared as to its value and contents, is lost, the value of the articles not mentioned in the Act may be recovered from the carrier, although the value of the articles within the Act cannot be recovered. Thus, where a lady's portmanteau was lost on a railway, and it was proved that it contained, amongst other things, a silk dress of over 10*l.* in value, it was held that the company were not liable for the value of the dress, although they were liable for the other things (p).

It seems to be well established that if a parcel is lost which contained undeclared goods of over 10*l.* in value within the Act, and also other goods not within the Act, then the carrier is liable for these last-mentioned goods and for the box, portmanteau, or other case in which the goods were packed; but he is not liable for the goods within the Act. If, however, a box or case is lost which contains only undeclared goods within the Act, the total value of which exceeds 10*l.*, then the carrier is not liable either for the goods or for the case in which they were packed. Again, where a claim is made in respect of a thing which was in the same parcel as some undeclared thing coming within the Act, the value of the first thing can only be recovered if it is a separate article from the other. Its value cannot be recovered if it is merely an accessory of the thing within the Act, as the frame of a picture, the buttons on a silk dress, or the morocco case containing a ring. Whether a thing is a separate article or the accessory of another thing is a question of fact to be decided in the circumstances of each case.

In *Treadwin v. Great Eastern Ry. Co.* (q) the plaintiff

(o) See *Casswell v. Cheshire Lines Committee*, [1907] 2 K. B. 499, and p. 115, *post*.

(p) *Flowers v. S. E. Ry. Co.* (1867), 16 L. T. 329.

(q) (1868), L. R. 3 C. P. 308.

had sent by the defendant company to an ecclesiastical art exhibition at Norwich a lace corporal. This is an article intended to cover the altar during the celebration of the Holy Communion. It was placed in a gilt frame and covered with glass for the purpose of exhibition, and the whole was placed in a wooden packing case. No declaration of value was made. The package was lost in transit, and an action was brought to recover the value of the lost property, the corporal being valued at more than 10*l*. The company pleaded the protection of the Act; and as to the lace, their plea was unanswerable; but a verdict was given against them for 1*l*. 17*s*. 6*d*., the value of the gilt frame (without the glass) and the packing case. The Court held that the plaintiff was entitled to this verdict on the ground that the frame was a separate article, not to be treated as part of the corporal or as accessory to it, but merely used for exhibiting the corporal; and as the packing case was used to convey this frame as well as the corporal, its value also was recoverable. It is to be noted in this case that the lace corporal was a thing which did not require a frame, and did not have a frame in ordinary circumstances. It was only put in the frame for purposes of transit and exhibition. On the other hand, the frame of a picture is part of it, as in ordinary circumstances a picture requires a frame and is not seen without one. Therefore, where a case containing framed pictures was lost on a railway, and the pictures had not been declared, it was held by the Court that the whole parcel was within the Act, and that the railway company were not liable at all (*r*). In another action (*s*), where a number of valuable maps in a case were lost, the case being merely an accessory to the maps and containing no other articles, it was held that, the maps being within the Act, the value of the case could not be recovered from the carrier.

In one case, however, the Act affords the carrier no

(*r*) *Henderson v. L. & N. W. Ry. Co.* (1870), L. R. 5 Ex. 90.

(*s*) *Wyld v. Pickford* (1841), 8 M. & W. 443

protection for the loss of, or injury to, undeclared goods—that is, where the loss or injury arises from the felonious act of any servant of the carrier (*t*). Thus, if a railway servant were, out of spite, to set fire to a shed, and so destroy a valuable parcel of silk which had not been declared, the company would be liable, because the loss arose from the felonious act of a servant. The felonious act, however, for which the carrier is most often held liable is larceny by his servant. Thus, if a guard on a railway were to open a lady's trunk, being carried in his van, and to steal therefrom a diamond necklace, the railway company would be liable even though the lady had made no declaration of the contents of her trunk. If, however, a person who has lost undeclared goods wishes to take advantage of this exception to the general provisions of the Act, it is not enough for him to show that *somebody* must have stolen his goods while they were in transit, and that that somebody was very likely a railway servant. On the other hand, it is not necessary for *him* to give evidence sufficient to convict one particular servant of the crime of larceny, or to name the thief. It will be sufficient to make the company liable if he can convince a jury, by proper evidence, that the goods were in fact stolen, and that it was extremely unlikely that anyone except a servant of the company could have stolen them. This falls very far short of what is necessary to convict an individual of the crime. If in a prosecution it can only be proved that one of two persons must have stolen a thing, neither of those persons can be convicted; but if the owner of lost goods is able to prove that one of two railway servants must have stolen them, the company will certainly be liable.

Thus, in *Vaughton v. The London and North Western Ry. Co.* (*u*) the plaintiff delivered a parcel of jewellery, worth more than 10*l.*, to the defendant company to be carried from Birmingham to Liverpool. No declaration

(*t*) Sect. 8.

(*u*) (1874), L. R. 9 Ex. 93.

of value was made. The parcel never reached its destination ; but a few days after it ought to have been delivered some of the missing articles were found in a pawnbroker's shop in Liverpool, and later on part of the box in which the jewellery had been packed and a few of the stolen articles were found upon a siding belonging to the company. The plaintiff sued for the value of the lost jewellery, and the company pleaded they were protected by the Act. The jury found that the goods had been stolen by some servant or servants of the company, and gave a verdict for the plaintiff for 47*l*. The Court held that the evidence given was more consistent with the guilt of the company's servants than with that of any person not in their employment, and that there was enough evidence to justify the verdict. The judges said that it was not necessary to give evidence that would convict any particular individual, and one of them said : " Suppose that a railway company have possession of a parcel to be forwarded on the day following its being received. Suppose that in the interval it is locked up in a cupboard to which two of their servants, and only two, have a key, and that it is stolen in the night under circumstances which irresistibly lead to the inference that one or other of these two persons must be the thief. It might well be that it would be impossible to bring home the crime to either, and that, if either was put upon his trial, he would be entitled to acquittal. But in such a case the company would be liable for the loss." It is not enough, however, merely to show (as might be inferred from this case) that the facts are more consistent with the guilt of a servant of the company than of any other person. A plaintiff must go further than this, and give evidence raising a clear presumption of guilt on the part of some servant, though he may not be able to identify the individual. In *McQueen v. The Great Western Ry. Co.* (x) the plaintiff delivered to the company at Cardiff a large case of valuable drawings to be carried to London. No

(x) (1875), L. R. 10 Q. B. 569.

declaration was made as to the nature or value of the contents of the case. The company's servants put this case into a truck, in which also was placed a quantity of other goods, chiefly empty boxes. The truck was placed on a siding to await the departure for London of the train of which it was to form part. This siding was about a mile in length. There were two level crossings over it, and it was easily accessible to any person from almost any direction. Large numbers of persons not connected with the railway company in any way constantly used the crossings, and even used other parts of the premises as a convenient thoroughfare. On the arrival of the train in London the case was missed, and it was not heard of again. The plaintiff sued the company for the value of the drawings, and the company claimed the protection of the Act. It was admitted, on behalf of the defendants, that the case must have been stolen whilst in the truck upon the siding, but no explanation was given as to how it was stolen. The jury found a verdict for the plaintiff for 365*l.*, but on appeal this verdict was set aside. The Court held that it is not enough to show that it is more likely that the thief was a servant of the company than another person; evidence must be given establishing a *primâ facie* case against the servants of the company. It is not enough to show that the company's servants had better opportunity than others of stealing the property, if other persons had abundant opportunity of so doing. The person who asserts that a felony has been committed must prove his assertion by reasonable evidence supporting his assertion. No such evidence was given in the case, and therefore the jury were not justified in returning such a verdict.

But where goods were stolen from a parcel in circumstances which showed that the thief must have spent a considerable time in opening and repacking the parcel, and the company were unable to prove that any person other than servants of the company had any effective access to the parcel, the Court of Appeal held that there

was evidence that the goods were stolen by a servant of the company (*y*).

Where a company recognises any place as a receiving office, authorising some person to receive goods at that place as agent for the company, the company will be liable for goods stolen by a servant of that agent just as if he were a servant of the company (*z*).

In respect of undeclared goods exceeding 10*l.* in value of the kinds mentioned the Act provides that the carrier shall not be liable for "loss of or injury to" such goods. The word "injury" does not give rise to much difficulty in law. Whether or not goods have been injured must in all cases be a question of fact. The word "loss," however, requires more explanation. Loss may either be permanent or temporary. If goods are lost permanently, the facts are clearly within the intention of the Act; and if the carrier is liable he must pay the full value of the goods, while if he is protected by the Act he pays nothing at all. Goods are, however, often lost only for a time. Eventually they are found and restored to their owners, who may, nevertheless, have suffered great inconvenience and damage from delay. For such inconvenience a railway company may have to pay damages, as will be seen later (*a*), but the Carriers Act may afford protection against such liability in the case of goods within the Act which are temporarily lost. Attempts have been made to persuade the Courts to hold that, as to undeclared goods within the Act, the Act only applies to permanent and complete loss, not to temporary loss. The judges, however, have refused to take this view, and have held that the carrier is equally protected from liability for undeclared goods whether the loss is permanent or only temporary. It is, however, only against *loss* that the carrier is protected. Where there has been unreasonable *delay* in the delivery of goods without loss, *i.e.*, where the

(*y*) *H. C. Smith, Ltd. v. Mid. Ry. Co.* (1919), 88 L. J. K. B. 868.

(*z*) See *Stephens v. L. & S. W. Ry. Co.* (1886), 18 Q. B. D. 121.

(*a*) See p. 68, *post*.

goods have never been lost sight of but have negligently been detained, the Act affords no protection (b). And if goods are temporarily lost and found again by the carrier, it becomes the duty of the carrier to deliver them within a reasonable time after recovering them; and if after having recovered them the carrier fails in this duty, the Act affords him no protection for such detention.

In *Millen v. Brasch & Co.* (c) the defendants were carriers between London and Rome. The plaintiff delivered to them in London a trunk to be carried to Rome. By the carelessness of the defendants' servants the trunk was sent to New York. It was lost sight of and did not turn up again for about four months, but was eventually recovered. The trunk contained silk dresses and a sealskin jacket, articles within the Act and of over 10*l.* in value. The plaintiff was put to much inconvenience by the miscarriage of these things, and had to buy others in Rome at an increase of price. The articles also were injured through being carelessly handled in the New York Custom House. The plaintiff sued the carriers for damages, and the carriers pleaded in defence, that as no declaration had been made as to the nature or value of the contents of the trunk they were entitled to the protection of the Carriers Act. On appeal, judgment was given for the carriers on this ground. The Court held that where goods, which ought to be declared and are not declared, are detained by a carrier without being lost by him, he is liable for such detention. In this case, however, the goods were "lost" within the meaning of the Act, although the loss was only temporary, and the Act protected the carriers. In the words of the judgment: "The result comes to this: if goods which ought to be declared, and are not declared, are lost, whether temporarily or permanently, the carrier is protected from liability for their loss and its consequences. But whether goods not permanently lost are lost within the meaning

(b) *Hearn v. L. & S. W. Ry. Co.* (1855), 10 Ex. 793.

(c) (1882), 10 Q. B. D. 142.

of the Carriers Act must depend upon whether they have been lost by the carrier as distinguished from lost to the owner; and this again must depend on the facts of each particular case. If the carrier temporarily loses the goods and delivers them within a reasonable time after he recovers them, he will not be liable; but if he keeps them after he has recovered them, the Carriers Act will not protect him from such subsequent breach of duty."

Again, a railway company is not deprived of the protection of the Act by reason that the goods were negligently carried beyond their destination or upon an entirely different journey from that contracted for, or negligently delivered to the wrong person (*d*).

But where the carrier or his servant purposely and wilfully does some act which leads to loss or injury the Act affords him no protection. Thus the carrier would be liable for undeclared goods which were wilfully damaged or knowingly handed over to a wrong person, or which the carrier converted to his own use (*e*).

It is to be noticed that although a carrier may be protected from liability by the Act in respect of undeclared goods, still, if the goods are lost or injured by the negligence or misconduct of a servant of the carrier, that servant may himself be personally liable to pay damages, and he is not protected by the Act. This provision is, however, of little practical importance, from the fact that the Act only applies where the goods exceed 10*l.* in value, and it is seldom worth while to bring an action against the servant of a railway company in those rare cases where negligence on his part can be proved to have caused the loss, as he is most probably in a low rank of the service and unable to satisfy any judgment which may be obtained against him for a considerable sum.

Where the nature and value of the contents of a parcel have been duly declared and the increased charge has been paid and the goods thus insured are lost or injured,

(*d*) *Morritt v. N. E. Ry. Co.* (1876), 1 Q. B. D. 302.

(*e*) See *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373.

the owner has not only the right to compensation for the loss or damage, but is also entitled to recover back from the carrier the increased charge (*f*). In case of loss the carrier is not necessarily bound to pay the value declared by the consignor; the consignor must prove the value of the lost goods by ordinary legal evidence (*g*). The consignor, however, cannot recover more than the amount which he declared to be the value of the goods (*h*). Where the goods are sent by a seller to a buyer, the value is the invoice price to the buyer, not the price paid for the goods by the seller (*i*).

A consignor is not bound to declare the contents of a parcel which contains goods within the Act. He can take the risk if he chooses. If a parcel containing undeclared goods is accepted, the carrier is not justified in refusing to carry the parcel on finding out the contents, but he is excused in case of loss. When goods are declared the carrier is not obliged to charge the higher rate. If he accepts them without demanding the higher rate, the Act affords him no protection in case of loss or injury. Where goods are declared, and the extra charge is demanded but is refused, the carrier may refuse to carry at all, or else he may carry and will then be entitled to the protection of the Act.

With regard to articles not named in the Act, it is provided by the Act that no public notice shall in any way limit or affect the common law liability of the common carrier for the loss of or injury to such things (*k*). Hence no notice stuck up in a carrier's receiving office purporting to limit the carrier's liability for goods not within the Act, is of any effect, even though the sender of the goods is fully aware of the notice and makes no objection.

It is further provided, however, that nothing in the Act is in any way to affect any special contract between the carrier and the consignor (*l*). A special contract

(*f*) Sect. 7.

(*g*) Sect. 9.

(*h*) See *M'Cance v. L. & N. W. Ry. Co.*, *post*, p. 105.

(*i*) *Blankensee v. L. & N. W. Ry. Co.* (1882), 45 L. T. 761.

(*k*) Sect. 4.

(*l*) Sect. 6.

means an agreement expressly made between the carrier and the other party with respect to a particular consignment of goods. If any such contract is made, the relationship between the parties is governed by the contract, and not necessarily by the Act or by the common law. The contract may be inconsistent with the Act; in that case the Act does not apply. But although there is a contract, the contract may be one which is not inconsistent with the Act; in that case the Act will apply so far as its provisions are not varied by the contract.

In *Shaw v. Great Western Ry. Co. (m)* the plaintiff sent a portmanteau by the defendant railway company, which contained, amongst other things, jewellery to the value of 250*l*. She did not declare the contents of the portmanteau, but she signed a consignment note, which contained a condition that the company were *entirely* relieved from liability for loss of things within the Carriers Act, unless declared. The jewellery was stolen from the portmanteau by a servant of the company without any negligence on the part of the company, and the plaintiff sued for its value. It was held, however, that she could not recover, for by her contract contained in the consignment note she had agreed to relieve the company of *all* liability, and that included even theft by one of their own servants.

When the Carriers Act first became law, the earliest railway had only just been opened, and no one knew with certainty whether this new mode of transport would be a success or not. Probably the Act was passed with little thought of railways. Mail coaches, stage coaches, waggons and vans are mentioned in the Act itself; but railways are never expressly referred to. Railways and railway companies are only brought within the Act by the use of the terms "other public conveyances by land for hire" and "other common carriers." These words are, of course, quite wide enough to include the railway companies. But within a very few years after the passing

(m) [1894] 1 Q. B. 373. See *post*, p. 35.

of the Act everything was changed. The whole face of the country became covered with railways: railways ran to every town of any importance; and carriage by railway became almost the only mode of carriage by land, except for very short distances. This new order of things had the effect of creating huge monopolies. If a person wished to send goods from one place to another, he found he could only do so by employing a railway company, and very likely he had no choice of railway. He had to send his goods by one certain railway, or not at all. In such circumstances the companies became exceedingly powerful, and it is not surprising to find that they have made great efforts in every possible way to cut down and limit the great responsibility attaching to them at law as common carriers.

The companies were prevented by the Carriers Act from limiting their liability by sticking up notices, but the Act expressly preserves to them the powers of making special contracts with consignors. It was the great object of every company, therefore, whenever the risk of carrying certain articles was considerable, to protect themselves by making contracts limiting their liability. They were often in such a position as to be able, practically, to insist on such contracts; and so they managed to do a very great part of their most risky business under special agreements with their customers, which to a large extent deprived the customer of his rights under the general law relating to carriers. The way this was effected was as follows:—When a person brought goods to a railway station to be forwarded, he was handed a paper or ticket which acknowledged the receipt of the goods and of the money charged for carriage, and contained also in print a set of *conditions* on which the goods were carried. If those conditions were brought to his notice and if he did not dissent from such conditions, the Courts held that the conditions constituted a special contract between the consignor and the company, and that the liability of the company was determined by the contract. If the condi-

tions were not brought to his notice, the consignor was not bound by them; but it was almost impossible for him to prove that they did not come to his notice if they were plainly printed and put into his hand. Very often the conditions were all on the back of the paper, while on the face were the words "See back." But whether they were on the face, or on the back with a reference to them on the face, the Courts usually presumed that the consignor had notice of the conditions when they were placed in his hand. If he did not choose to read them and so ascertain what the contract was into which he was entering, that was his own fault. And however onerous the contract was, a person who deliberately made a contract was bound by it, even when he made a bad bargain. As a matter of fact, of course, it no doubt frequently happened that such conditions were not read. If, however, the goods were lost or damaged and the owner tried to get compensation, he was referred to the conditions of his contract; and then, for the first time probably, he read them, and ascertained that the railway company had accepted his goods upon terms which protected the company from almost every kind of liability. There are a great many cases reported illustrating this state of things. It will be sufficient, however, to take one as an example, and *Carr v. The Lancashire and Yorkshire Ry. Co.* (n) is a type of many cases of hardship which came before the Courts. The plaintiff in this case delivered to the railway company a horse to be carried by them in a horse-box. He paid the charge, and a ticket or way-bill was handed to him, at the foot of which were these words:—"This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway or in their vehicles." Through want of proper care on the part of the company's servants the horse-

(n) (1852), 7 Ex. 707.

box was in collision with some trucks, and the horse was killed. The plaintiff sued the company for the value of the horse, and the jury came to the conclusion that the accident was due to gross negligence on the part of the defendants, and returned a verdict for the plaintiff, with 87*l.* damages. On appeal, it was argued that the contract did not protect the company, as every carrier is bound to take reasonable care of the goods entrusted to him, and here reasonable care had not been taken. The Court, however, held that judgment must be for the company. The judges said that the Carriers Act allows carriers to make special contracts to carry goods. Here there was such a contract, and the liability of the carrier depended upon its terms. If the plaintiff had intended to make the defendants liable as common carriers, he ought to have tendered them a reasonable sum for the carriage of his property, and, upon their refusal to carry, have sued them for not carrying. He did not, however, take this course. The only question was whether the contract protected the defendants against loss arising from their gross negligence. By entering into the contract the plaintiff had taken upon himself all risk of conveyance, and the company were merely bound to supply a carriage and locomotive power. By the contract the company had got rid of all liability for even gross negligence.

Cases of this sort attracted a great deal of attention. Complaints from the public were loud, and there was a demand for the interference of Parliament. Judges, too, though deciding such cases in favour of the companies according to law, frequently expressed their opinions that the law should be modified, and that something should be done to check the avoidance of liability by railway companies. It seems that this last-mentioned case, which was heard in 1852, was a good deal commented upon, and probably helped to bring matters to a crisis.

Accordingly, in 1854, Parliament did interfere; and the result of such interference was that Act of such extreme importance to railway companies—the Railway and Canal Traffic Act, 1854.

CHAPTER III.

CONTRACTS LIMITING LIABILITY.

THE Railway and Canal Traffic Act, 1854 (*a*), provides (*b*) that all railway companies shall, according to their powers, afford all reasonable facilities for receiving and forwarding and delivering of traffic. "Traffic" includes passengers and their luggage, goods, animals, and other things carried by any railway company. Every company must also give facilities for receiving and forwarding through traffic from and to other lines which communicate with or are near to their line without any unreasonable delay. Further, undue preference or advantage to one customer over another is forbidden (*c*).

The Act thus imposes on railway companies the duty of carrying for anyone who desires to contract with them all sorts of goods which they have facilities for carrying, including animals. They cannot, therefore, refuse to carry any such goods; but neither this Act nor any other Act imposes upon a company the obligation to carry any goods as common carriers (*d*).

Section 7, however, provides that every railway company shall be liable for the loss of or injury to any goods carried by them occasioned by the neglect or default of the company or its servants, notwithstanding any notice, condition, or declaration by the company limiting such liability; every such notice, condition, or declaration being declared to be null and void. The goods to which

(*a*) 17 & 18 Vict. c. 31. See Appendix, p. 247.

(*b*) Sect. 2.

(*c*) For the meaning of "facilities" and "preference," see Part III., pp. 218 and 227, *post*.

(*d*) *Dickson v. G. N. Ry. Co.* (1886), 18 Q. B. D. 176; *Smith & Sons v. L. & N. W. Ry. Co.* (1918), 120 L. T. 273.

this applies include horses, cattle and other animals; but, as will be seen later (e), the liability of railway companies for certain animals is limited to certain sums, unless higher values are declared. The loss or injury for which the company is liable may be either in receiving, forwarding or delivering the goods.

Nothing in the Act is to prevent a company from making such conditions with respect to the receiving, forwarding and delivering of goods as shall be adjudged by the Court before which any question is tried to be just and reasonable.

No special contract, however, between a company and any other party respecting the receiving, forwarding or delivering of goods is to be binding upon such party unless the contract is signed by him or by the person delivering the goods to the company. The consignor, therefore, may be bound not only by the signature of himself or his agent, but also by the signature of the person who delivers the goods to the company, whether in fact that person had authority to sign or not.

It is further provided that nothing in the Act is to alter or affect the rights, privileges, or liabilities of any railway company under the Carriers Act with respect to goods within that Act.

The above provisions apply to liability for "neglect or default" causing loss or injury. The section does not apply to loss or injury due to other causes. Therefore there is nothing in the section to prevent companies from protecting themselves from the liabilities of common carriers for injury not due to any neglect or default on their part, by making conditions which, if assented to or expressly brought to the notice of the consignor, are binding although they may not be reasonable nor signed (f). "Default" in the section means default in the nature of negligence, and within the scope of the servant's authority. The section is only aimed at negligence and default of

(e) See p. 102, *post*.

(f) See *Peck v. N. Staffordshire Ry. Co.* (1863), 10 H. L. 473, at p. 510

this nature. Now goods may be lost by the default of a servant which is not in the nature of negligence, nor within the scope of the servant's authority. Thus goods may be stolen by a servant without any negligence on the part of the company. This is certainly loss by the default of a servant; but this default is not within the section, and the company may protect themselves against liability for such default by making conditions, although the conditions are neither reasonable nor signed (*g*). If, however, the theft of the servant was facilitated by negligence on the part of the company, the section would apply. Again, the section only applies to matters connected with the "receiving, forwarding and delivering" of the goods. Therefore conditions relating to matters after the transit (*h*) is at an end are not within the section. Conditions relating to the warehousing of the goods after the transit is complete and conditions relating to lien come under this principle.

However, it is not going too far to say that nearly all cases of loss or injury may be traced to some negligence on the part of the company or their servants. It is, therefore, liability for loss or injury from negligence against which companies are most anxious to protect themselves. They cannot do this, however, by any notice, condition, or declaration given or made to the consignor. No condition which a company may make limiting their liability for negligence is of any effect at all unless it is "just and reasonable." And, further, no special contract between the company and the consignor which limits the liability of the company for negligence is binding on the consignor unless in writing and signed by him or in his behalf.

It was for some time doubtful whether, on the proper construction of this section, just and reasonable conditions are binding whether contained in a signed contract or not; and also whether conditions in a signed contract are binding whether they are just and reasonable or not.

(*g*) *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373.

(*h*) For meaning of "transit," see *post*, p. 90.

After a good deal of fluctuation of opinion amongst the judges, it was finally settled that conditions exonerating a company from liability for negligence, although perfectly just and reasonable, are not binding upon the consignor unless contained in a writing signed by him or on his behalf; and, on the other hand, that conditions, although contained in a contract signed by the consignor, are not binding upon him unless they are just and reasonable.

This was finally settled in the famous case of *Peek v. The North Staffordshire Ry. Co.* (i), in which the meaning of the section was fully considered by the House of Lords after taking the opinion of a large number of the judges. In the evidence given at the trial of this action, it was proved that the plaintiff was the owner of three marble mantelpieces which he wished to send to London by railway. A printed notice was delivered to the plaintiff, intimating that the company would only receive, forward and deliver goods subject to certain conditions stated in the notice. Among those conditions was the following: "That the company shall not be responsible for the loss of, or injury to, any marbles, musical instruments, toys, or other articles which, from their brittleness, fragility, delicacy, or liability to ignition, are more than ordinarily hazardous, unless declared and insured according to their value." By plaintiff's request the company fetched the chimney-pieces and conveyed them as far as their station, but no definite arrangement was come to as to forwarding them to London. A long discussion then took place, both verbal and written, between the plaintiff and the company; the plaintiff asking what was the rate of insurance, and the company in return saying that he would be told the rate when he made a declaration of the value of his goods. At last the company told the plaintiff that, at the uninsured rate, the charge would be at the rate of 2*l.* 15*s.* a ton, and, if insured, the charge would be 10 per cent. on the declared value in addition.

(i) (1863) 10 H. L. 473.

Then the plaintiff wrote : " Please forward the three cases of marbles, not insured." This was signed. The goods were accordingly forwarded, and invoiced at the uninsured rate. They were injured in transit from being exposed to wet, and the plaintiff sued the company for damages. In defence the company contended that the documents referred to constituted a special contract signed by the plaintiff, containing a just and reasonable condition that the company should not be responsible for injury to the goods unless they were insured according to their value, which was not done. After much difference of opinion amongst the judges and many vicissitudes, the case reached the House of Lords. It was there held that if the effect of the condition was merely that the company would not be insurers against accidents beyond their control, while remaining liable for all loss or injury which could be shown to arise from their neglect or default, the condition would be reasonable, and would not be within the enactment which renders void only such conditions as limit a company's liability for neglect or default. The condition really meant that the company should not be liable for loss or injury, however caused. This condition was unreasonable. A carrier cannot say he will not be liable at all for neglect unless the goods are insured against all possible loss. A carrier is bound to carry for a reasonable remuneration, and if he offers to do so, but at the same time offers in the alternative to carry on the terms that he shall have no liability at all, and holds forth as an inducement a reduction of the price below that which would be reasonable remuneration for carrying at carrier's risk, or offers some other advantage which he is not bound to give, such condition may be reasonable within the meaning of the Act. The consignor must, however, really have an alternative, and the power, if he pleases, to send his goods at the carrier's risk. In this case the high rate of insurance was a deterring rate, and the condition was unreasonable, as the consignor had no *bonâ fide* choice offered to him. It was further decided that the documents referred to did

not constitute a contract in writing containing the condition signed by the plaintiff; and that the Act requires that not only must a condition be just and reasonable, but also that it must be embodied in a special contract in writing, signed by the owner of the goods or the person delivering the goods to the company. Therefore on all points the House of Lords was against the company, and the plaintiff, in the end, recovered judgment for the damage to his marbles.

The difficulty is to decide when a condition is just and reasonable. It is impossible to exactly define these words. Each case must, to a large extent, be decided on its own facts, and when the question arises, it is for the Court to say whether the particular condition is or is not just and reasonable. We can, therefore, arrive at any clear idea of what the words mean only by studying the decisions of the Courts; and by so studying we can discover some fairly reliable guidance. It seems clear that a railway company are under no obligation to undertake all the liabilities of a common carrier, but are bound to carry all ordinary goods offered for carriage for a reasonable remuneration and to take all reasonable risks; that is, all risks arising from the negligence of the company or its servants. If the company are ready to do this, but offer the consignor an alternative that in return for some substantial advantage he shall agree to conditions relieving the company of a portion of their liability, such conditions limiting the liabilities of the company, if accepted, will probably be held to be just and reasonable.

For example, in *Glenister v. The Great Western Ry. Co.* (k) the plaintiff had consigned a quantity of chairs by the defendant railway company, and had signed the usual printed owner's risk consignment note which contained the following words:—"Receive and forward the undermentioned goods, to be carried at the reduced rate below the company's ordinary rate; in consideration whereof I undertake to relieve the Great Western Railway

(k) (1873), 29 L. T. 423.

Company, and all other companies over whose lines the goods may pass, from all liability in case of damage or delay, except upon proof that such loss, detention, or injury arose from wilful misconduct on the part of the company's servants." There were two rates in operation for these chairs. At the higher rate, which was 1*l.* 10*s.* a ton, the company were prepared to carry the goods with all the liabilities of common carriers. The reduced rate, chosen by the plaintiff with full knowledge of the two rates, was 1*l.* 5*s.* a ton. The trucks in which the chairs were loaded were overturned through cattle getting on the line owing to negligence of the company's servants, and the result was that the chairs were destroyed. The plaintiff sued for damages and recovered in the County Court. On appeal, however, judgment was given for the railway company. The Court held that the plaintiff had a fair option either to send his goods at the company's risk at a rate which was not prohibitive, or to accept the conditions in the signed contract on the terms of paying a lower rate. There was nothing unreasonable, therefore, in the condition, and the company was protected from liability by the contract.

In *Lewis v. The Great Western Ry. Co.* (1) the plaintiff sent a quantity of cheese by the defendant company's railway from London to Shrewsbury. The cheeses numbered 156, and weighed nearly four tons. They were of various sizes, weighing from 50 lbs. to 80 lbs. apiece. There were two rates in operation, as the consignor well knew. The ordinary rate amounted to 3*l.*, and the reduced rate to 2*l.*, for carrying the cheeses from London to Shrewsbury. The consignor signed a contract similar to that quoted in the last case which incorporated a notice by the company that there were two rates: one, the ordinary rate when the company took the ordinary liability of a carrier; the other, a reduced rate adopted when the sender relieved them of all liability for loss, damage, or delay, except upon proof that such loss, damage, or delay

(1) (1877), 3 Q. B. D. 195.

arose from wilful misconduct on the part of the company's servants. The cheeses were packed on their rims in two tiers in an open truck and conveyed to their destination. This was an improper mode of packing. They should have been placed on the flat side in a single layer. Owing to the mode of packing and the heat of the weather the cheeses were crushed to pieces and ruined. The plaintiff accordingly sued the company for damages, and contended at the trial, in the first place that the conditions of the contract were not just or reasonable, and in the second place that the company's servants had been guilty of misconduct by packing the cheeses in an improper manner. The company succeeded on both points, and the plaintiff appealed, but the Court of Appeal confirmed the decision of the lower Court. After stating the facts Bramwell, L.J., said : " Now, can it be said that that is an unreasonable contract ? Even were the exceptions of the risk of wilful misconduct of the defendants' servants omitted from the terms, I should think it would be impossible to hold the contract unreasonable. Do we not feel assured that if we to-day held this contract unreasonable, and that the plaintiff was foolish to make it, he would to-morrow enter into a similar contract, saying to the railway company, ' Pray carry my goods at the 40s. instead of the 60s. rate. I will run the risk ' ? Then, if that contract came again before us, how could we hold that it was not just and reasonable ? It would be impossible to do so. Then would it be unreasonable for a railway company to say to a man of business, and competent to judge for himself, ' We are continually told that our servants are negligent, sometimes they are ; we are also often told that they are guilty of wilful misconduct, sometimes they are ; but we wish to avoid examining and contesting such assertions, so we will carry your goods at a lower rate if you will spare us inquiry as to whether any damage that happens to them has been occasioned by either of those causes, and will take the consequences ' ? Were such terms proposed, explained, and accepted, I fail

to understand how any Court would hold they were not just and reasonable.” The Court also decided that there had been no wilful misconduct (*m*) on the part of the company’s servants, as there had been no evidence that they knew that the mode of packing which they had adopted was likely to cause injury.

In *Dickson v. The Great Northern Ry. Co.* (*n*) the plaintiff sent a greyhound worth 60*l.* by the defendants’ railway from London to Newcastle. The plaintiff had signed a contract containing the following words: “Notice is hereby given that the company are not and will not be common carriers of dogs, nor will they receive dogs for conveyance except on the terms that they shall not be responsible for any amount of damages for the loss thereof or for injury thereto beyond the sum of 2*l.* unless a higher value be declared at the time of delivery to the company, and a percentage of 5 per cent. paid upon the excess of value beyond the 2*l.* so declared.” No declaration was made of the value of the dog at the time of delivery to the company, nor was any payment made beyond the sum of 6*s.*, the usual charge for the carriage of a dog from London to Newcastle. While the dog was in charge of the defendants a porter negligently wheeled a barrow over its tail, and it was so injured as to be deteriorated in value to the extent of 25*l.* The plaintiff sued the company for 25*l.*, and the company paid 2*l.* into Court and contended that on the contract which had been signed they were only liable for that amount. In the County Court, however, the plaintiff got judgment for the full amount claimed. On appeal to the High Court the judges thought the conditions of the contract reasonable, and reversed the decision of the County Court. The plaintiff accordingly appealed further to the Court of Appeal, and that Court decided that the County Court was right, and that the plaintiff was entitled to recover. The Court held that although a railway company is not bound to be common carriers of dogs still they are bound by the Act to carry

(*m*) See pp. 46 and 80, *post*.

(*n*) (1886), 18 Q. B. D. 176.

dogs on reasonable terms, and can only limit their liability for negligence in respect of dogs by reasonable conditions. Here the plaintiff had the alternative of sending his dog for 6s., relieving the company of all liability above 2*l.*, or of paying 2*l.* 18s. additional, making 3*l.* 4s. in all, for the carriage of the dog at the company's risk. The question was, Was this a fair alternative? The first-class fare for a passenger was only 1*l.* 18s. 3*d.* and a company's liability for injury by negligence to a passenger is unlimited. So that they charged about two-thirds more to convey the dog at company's risk than to convey a passenger in a first-class carriage. Further, the 5 per cent. on the value of the dog was a charge irrespective of the length of the journey, so that on a short journey the comparison with a passenger's fare would be still more remarkable. No person could reasonably be expected to submit to such terms. Therefore, no fair alternative had been open to the plaintiff. An alternative which no reasonable person could possibly adopt is no alternative at all. Hence, the conditions of the contract were not just and reasonable, and, therefore, the contract was void.

After the decision of this case the English railway companies, acting in concert, decided to adhere to the form of the contract in use for the carriage of dogs, but to charge $1\frac{1}{4}$ per cent. instead of 5 per cent. on the declared value beyond 2*l.* For about twenty years this arrangement worked satisfactorily, and the reasonableness of the contract went unchallenged. Then came the case of *Williams v. The Midland Ry. Co.* (o), which reopened the question. In that case a dog worth 300*l.* was sent by railway packed in a hamper. No declaration of value was made, but the consignor signed a contract similar to that in *Dickson's Case*, except that " $1\frac{1}{4}$ per cent." was substituted for "5 per cent." The dog was destroyed through the hamper catching fire owing to negligence on the part of the company's servants, and the owner brought the action against the company to recover its value. The

Court of Appeal held that, in view of the exceptional risk incurred in the carriage of such valuable animals, the conditions of the contract were reasonable; that the risk might be as great on a short journey as on a long one; that a reasonable alternative had been given to the consignor; and that the company were not liable beyond the sum of 2*l*.

Hence it may now be taken as established that though it is *prima facie* unreasonable for a company to require a consignor to pay a sum by way of insurance, estimated as a percentage on their value, as a condition of undertaking full responsibility for the safety of the goods, in exceptional cases such a condition may be reasonable. Companies have a right to demand such insurance under the Railway and Canal Traffic Act, 1854, in the case of certain animals (*p*), and under the Carriers Act in the case of certain valuables (*q*). Where exceptional risk is proved in the case of other goods which a company do not profess to carry as common carriers, the demand of such insurance may be reasonable. No condition, however, limiting a company's liability for negligence can be reasonable unless a fair alternative is given to the consignor to have his goods carried at the company's risk for a fair remuneration (*r*).

The Courts have always looked with extreme disfavour upon conditions aimed at relieving a company from *all* responsibility even for wilful misconduct on their servants' part. But even such conditions may be valid where the consignor is given some fair and substantial advantage as consideration for his agreement, and where he has a fair alternative offered to him to send his goods at the company's risk at a reasonable rate. This is clearly laid down in the case of *Brown v. The Manchester, Sheffield and Lincolnshire Ry. Co.* (*s*). The plaintiff was a fish merchant at Grimsby, who had for years been sending

(*p*) See p. 102, *post*.

(*q*) See p. 14, *ante*.

(*r*) *Ashenden v. London, Brighton and South Coast Ry. Co.* (1880), 5 Ex. D. 190.

(*s*) (1883), 8 App. Cas. 703.

fish by the defendant company's railway to Billingsgate Market. He signed a contract with the company, which was to hold good for five years from the time it was made. By this contract, in consideration of his fish being carried at a rate one-fifth lower than the ordinary rate, he agreed to relieve the company "from all liability for loss or damage by delay in transit, or from whatever other cause arising." After signing this contract, all fish sent by the plaintiff was forwarded by the company at the reduced rate. After the arrangement had been working smoothly for over three months, a consignment of fish for Billingsgate was delivered to the company, on the Wednesday before Good Friday, a day on which traffic on the line was exceptionally heavy. The company gave the plaintiff no notice of the state of the traffic. If he had known that there was any risk of delay, he might have kept his fish alive and avoided risk. As it was, the fish was delayed and the market was lost, and in consequence the plaintiff was a loser to the extent of 11. He sued for this amount in the County Court, and the question of the company's liability was taken through the High Court and the Court of Appeal up to the House of Lords, the various judges giving very contradictory decisions. It was proved at the trial that the plaintiff had saved 20% already during the time the contract had been in force, and that persons who signed these contracts used to send their fish in other persons' names if they wished to send them on the ordinary terms at the company's risk. It was contended for the plaintiff that the conditions in the contract were unreasonable, as they covered liability from every cause, including even wilful misconduct; that the company was guilty of misconduct in not notifying the condition of the traffic; and that there was really no effective alternative offered to the plaintiff to send his fish at company's risk, as in that case he could not compete with his rival traders. The House of Lords, however, held that the plaintiff had a *bonâ fide* option to send his fish at a reasonable rate at the company's risk, or at

a lower rate relieving the company of all liability ; that the conditions of the contract were just and reasonable, and the company were not liable to the plaintiff for his loss. In giving judgment Lord Bramwell said : “ Here is a contract made by a fishmonger and a carrier of fish who know their business, and whether it is just and reasonable is to be settled by me, who am neither fishmonger nor carrier, nor with any knowledge of their business. The plaintiff has put 20*l.* into his pocket by virtue of the contract, and he is now seeking to avoid it as an unjust and unreasonable one, yet keeping the 20*l.* Unless some evidence is given to show that a contract voluntarily entered into by two parties is unjust and unreasonable, it ought to be taken that that contract is a just and reasonable one, the burden of proof being upon the man who says that it is unjust and unreasonable. Now, in my opinion, this was a voluntary agreement. If there was no alternative the agreement was not voluntary, but there was most obviously an alternative. The plaintiff might have sent his fish paying 20 per cent. more than he did. If he had liked he might have sent his fish, paying in that ratio with liability in the carrier ; or he might have sent it upon the terms upon which he did send it, and he chose the latter. It is absurd to say that there was no real option, because the difference between the two rates was too wide, and competition forced the plaintiff to make the agreement he did. That is to say that there is no option because the terms are too good—the benefit given to the plaintiff is too great ; that if a less benefit were given to him and to all the other senders of fish—if instead of 20 per cent. being taken off the price it were 10, or peradventure 5 (for 10 might be too much for aught I know)—then, indeed, there would be an option ; but, as it is, it is such an irresistible temptation to him, I suppose, it is so good a thing for him, that he has no choice but to take it. The argument comes to this : the allowance is so just and reasonable to *all* fish dealers that it is unjust and unreasonable to *each* of them. This is a most extraor-

dinary proposition. The assumption that he is obliged to do it, because he cannot otherwise compete with his fellow fishmongers, is the most gratuitous one that was ever invented in this world. He says that he has put 20*l.* into his pocket, and because he has done so, that we are to infer that he could not carry on his trade unless he could put that 20*l.* into his pocket, and therefore that the thing is of a compulsory nature, and that he has no option, no choice, and that consequently his agreement is not voluntary. I really do not understand how such a conclusion could be arrived at, except by some generous feeling that railway companies ought to be kept in order for the benefit of fishmongers."

Wilful misconduct means the doing of something, or the omitting to do something, which it is wrong to do or to omit, and which the person answerable does or omits intentionally, knowing that his act or omission is likely to endanger the goods (*t*). It is misconduct to which the will is a party as contra-distinguished from accident, and is something beyond negligence even of a gross kind; but it includes the doing of an act with reckless indifference, not caring what the result of that indifference may be (*u*). In *Forder v. Great Western Ry. Co.* (*u*) the plaintiff, who was a fellmonger, delivered a parcel of sheepskins to be carried by the company from London to Winchester at owner's risk, and signed the usual consignment note relieving the company from liability, except on proof of wilful misconduct. The skins were injured in transit through being carried in a truck upon a bedding of wood chips which became entangled in the wool. The plaintiff complained to the stationmaster at Winchester of this injurious mode of carrying skins, and was informed that the officials at Paddington had been asked not to use the objectionable kind of litter again. Two months later the

(*t*) *Lewis v. G. W. Ry. Co.* (1877), 3 Q. B. D. 195. See p. 39, *ante*, and p. 80, *post*.

(*u*) *Forder v. G. W. Ry. Co.*, [1905] 2 K. B. 532, as explained by *Sheppard v. Mid. Ry. Co.* (1916), 85 L. J. K. B. 285, and *Norris v. G. C. Ry. Co.*, in note to same case,

plaintiff sent a similar lot of skins under a similar contract from London to Winchester. This second lot was injured in exactly the same way from the same mode of carriage. The plaintiff then brought an action in the County Court against the company claiming damages for the injury to both parcels of skins. The claim was dismissed in respect of the first parcel on the ground that there was no evidence of misconduct; but with regard to the second parcel the judge held that, as the attention of the company had been called to the fact that the packing of skins in wood chips was likely to produce damage, the fact that they were so packed amounted to misconduct, and judgment was given for the plaintiff. On appeal, however, the High Court held that as there was no evidence that the servants of the company who actually loaded the goods in the trucks, or who superintended the loading, were informed or knew that the mode of packing was likely to be injurious, there was no evidence of misconduct; and that the mere fact that some other official of the company knew that the mode of packing was injurious was not sufficient. It was therefore decided that no wilful misconduct had been proved, and that the company were protected by their contract.

In *Bastable v. North British Ry. Co.* (x) a travelling showman sent a switchback plant by railway, having signed a contract which provided that the company should not be liable for damage unless it arose from wilful misconduct on the part of their servants. The regulations of the company required that a load should be gauged whenever there was any reason to doubt whether it was within proper dimensions. The goods were loaded, but although there was clearly good reason to doubt whether the load would pass under the gauge, the responsible servant was content to judge of the dimensions by his eye alone, and despatched the load without gauging it. On the journey the goods were injured by coming in contact with part of a bridge. In an action for damages against the contracting company,

(x) [1912] S. C., 555,

the Court held that the defendants were liable, as the omission to pass the load under the gauge amounted in the circumstances to wilful misconduct.

When a plaintiff alleges wilful misconduct on the part of the company's servants, the burden is upon him to prove such misconduct. Where, however, misconduct, such as larceny, on the part of some person unknown is proved, and the plaintiff can show that no member of the outside public, but only servants of the company, had effective access to the goods while in transit, it is proper to infer that the misconduct in question was committed by some one or more of the company's servants (*y*).

From the cases cited it will be seen that, in deciding whether conditions limiting the liability of a company for neglect or default are just and reasonable or not, the important question is, Had the consignor a fair alternative offered to him? Could he, if he had chosen, have sent his goods at the company's risk for a reasonable sum? If these questions are answered in the affirmative, probably the conditions will be held to be just and reasonable, even though the company is relieved thereby from all liability from whatever cause arising (*z*).

The alternative offered is generally one of rates, the higher having to be paid if the goods are carried at the company's risk, while the consignor may choose the lower if he is prepared to agree to relieve the company of their liability for negligence. In certain circumstances, however, other alternatives are offered, as will be seen later (*a*).

The law seems to be that railway companies are common carriers of all goods which either they profess to carry as such, or which they do in fact carry without making any special agreement, subject to the limitation of the amount for which they are liable in the case of certain animals, and with the protection of the Carriers Act in respect of certain valuables. If they carry any goods

(*y*) *H. C. Smith, Ltd., v. Mid. Ry. Co.* (1919), 88 L. J. (K. B.) 868.

(*z*) See *Buckton v. L. & N. W. Ry. Co.* (1917), 117 L. T. 556.

(*a*) See p. 61, *post*.

(except those mentioned) without any special contract, they are subject to all the liabilities of common carriers. No special contract is any protection to a company from liability for neglect or default unless it is in writing, signed by the consignor or his agent (*b*). And even if there is a signed contract, the contract is useless to the company unless its conditions limiting liability for neglect or default are just and reasonable. A railway company, however, is never (except by special agreement) under any greater liability than that of the common carrier, for by sect. 89 of the Railways Clauses Act, 1845, it is provided that nothing in that Act or any company's special Act shall make a company liable in any case except where the common carrier would be liable, nor deprive a company of any protection or privilege to which common carriers are entitled.

Where a railway company agree to carry goods at "owner's risk," and this expression is not defined by the contract, it merely means that the owner takes the ordinary risks of transit and the company do not carry as insurers, but the company remain liable for negligence (*c*). Sometimes, however, a consignor, who has special notice of the company's definition of "owner's risk," uses his own form of consignment note in agreeing that his goods shall be carried "at owner's risk"; in such a case the expression will be interpreted as defined by the company (*d*), and the name of the consignor printed on such a form, whether at the top or the foot of the document, is a sufficient signature (*e*). But where goods are carried at reduced rates at "owner's risk" the expression is usually strictly defined in the contract, in a form supplied by the company, and nearly all the companies have adopted a similar form of contract or consignment note. A specimen is given in the Appendix, and should be carefully studied (*f*).

(*b*) *Wilkinson v. Lancashire and Yorkshire Ry. Co.*, [1907] 2 K. B. 222.

(*c*) See *United Machine Tool Co. v. G. W. Ry. Co.* (1914), 30 T. L. R. 312.

(*d*) *Buckton v. L. & N. W. Ry. Co.* (1917), 117 L. T. 556.

(*e*) *Wade v. L. & N. W. Ry. Co.*, [1921] 1 K. B. 582.

(*f*) See Appendix, p. 250, *post*.

Under the older forms of consignment note the companies were liable for loss, damage, or delay only where the owner of the goods could prove wilful misconduct. But under the forms now in use there are certain causes of loss or injury for which the companies accept liability, although the goods are sent at owner's risk. These are (1) non-delivery of any goods fully and properly addressed (*g*), unless such non-delivery is due to an accident to a train or fire; (2) pilferage from packages of goods, provided that such packages are protected otherwise than by paper or such like easily removable covering, and provided that the pilferage is pointed out to a servant of the company, on or before delivery; (3) mis-delivery, where the goods, although fully and properly addressed, are not tendered to the consignee within twenty-eight days after despatch. In any one of these three cases, however, the company reserve the right of avoiding liability by showing that such non-delivery, pilferage or mis-delivery was not caused by any negligence or misconduct on the part of the company or of any of their servants.

When goods are carried at the company's risk a consignment note is also commonly signed by the consignor. This is usually in the following form:—

“The X. Railway Company are requested to receive and forward, as per address and particulars on this note, the under-mentioned goods, on the conditions stated on the other side.

“Sender ———, Address ———.”

Each of these forms, it will be noticed, is a contract under which the goods are carried subject to certain conditions which are to be found on the back of the form, and are referred to on the face. The conditions on the two forms are similar, and are called the “general conditions” (*h*). Some of them are little more than simple statements of the general law. Others give the company greater rights than they have under the general law in

(*g*) “Non-delivery” of part of a consignment, i.e. short delivery, is not “non-delivery” of the consignment within the meaning of this contract; *Wills v. G. W. Ry. Co.*, [1917] A. C. 148.

(*h*) See Appendix, p. 251, *post*.

dealing with the goods after the transit is ended. Several of them will be commented upon later.

It must, however, be remembered that every company uses many forms appropriate to different classes of goods and to a variety of circumstances ; also, a form used by one company is not always exactly similar to that used by another company in similar circumstances. Therefore whenever a contract is in question the actual form used must be carefully studied.

In an owner's risk contract, where conditions limiting liability for negligence are reasonable as having been accepted for some consideration to the consignor, there is little doubt that all these general conditions are good.

In a company's risk contract any condition aimed at relieving the company from responsibility for negligence would probably be bad as inconsistent with the risk being on the company, and as unreasonable under the Act through the absence of consideration to the consignor for waiving his rights. None of the " general conditions " on the back of an ordinary consignment note relieve the company of liability for negligence in the receiving, forwarding, or delivering of the goods ; therefore none of them is within the Act. Conditions referring to matters after the transit is ended, and conditions relieving the company from liability for loss after handing the goods over to another carrier, are examples of conditions not affected by the Act (*i*). Conditions not affected by the Act are binding on the principle that they are brought to the knowledge of the consignor (*k*).

Amongst the general conditions is one that the company will not be liable for any loss of market. If a company accept goods for carriage with notice that they are intended for a certain market, they have broken their contract if the goods are late for that market ; but the company are not bound to accept goods with such notice. Loss of market may be caused by delay due to negligence.

(*i*) *Aldridge v. G. W. Ry. Co.* (1864), 33 L. J. C. P. 161.

(*k*) See pages 13, 30, 192.

In that case the delay is merely a consequence of the negligence in the forwarding or delivering of the goods, and the company can only be protected from liability by a signed contract the conditions of which are reasonable. Loss of market, however, may occur without any negligence on the part of the company. A condition protecting a company against claims for loss of market not caused by negligence is not touched by the provisions of the Act, and may be binding on the consignor if brought to his notice, although not signed, and whether reasonable or otherwise. If, however, goods are accepted with notice that they are intended for a certain market, a condition in a company's risk note against liability for loss of market would be unreasonable as seeking to limit the liability for negligence which the company would ordinarily incur in the circumstances (*l*).

In *Lord v. Midland Ry. Co.* (*m*) meat was carried under a condition that the company would "not be responsible for any damage to meat on the ground of loss of market, provided the same be delivered within a reasonable time after the arrival thereof at the station from whence delivery is to be made." The Court held that it was reasonable to protect themselves against liability for extraordinary damage for loss of market; that a company would not be liable unless they accepted goods with notice that their arrival at a certain time was essential; and that it would be reasonable to say they would not accept goods with such a notice.

Another of the general conditions runs thus :—

"The Company shall not be liable for loss from or for damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment or any part thereof or in the case of traffic to places outside the United Kingdom the termination of the carriage by a Railway Company of the United Kingdom nor for non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting Company."

(*l*) *Duckham v. G. W. Ry. Co.* (1890), 80 L. T. 774,

(*m*) (1867), L. R. 2 C. P. 339.

It is obvious that complaints as to damage ought to be made promptly, in fairness to the company. Otherwise they may have no proper opportunity of investigating the facts and finding out where the blame lies. It is doubtful whether this condition comes within the Act or whether it refers to matters arising after delivery; in any case, however, it has been held to be reasonable (*n*).

Another usual condition is that—

“Perishable articles (*a*) refused by the Consignee or (*b*) not taken away from the place to which they are consigned within a reasonable time after arrival or (*c*) insufficiently addressed or (*d*) not delivered in consequence of strike or riot may be sold without any notice to Sender or Consignee and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be equivalent to delivery.”

This is clearly a condition which it is to the advantage of the owner to make; for if there is delay in delivery due to no fault on the part of the company, prompt sale is probably the only way to save the owner from loss (*o*).

There is one class of goods that no company are bound to carry at all. That is dangerous goods. It is provided by sect. 105 of the Railways Clauses Act, 1845, that no person shall be entitled to carry, or to require a company to carry, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company are of a dangerous nature. If any such goods are sent by railway their nature must be distinctly marked on the outside of the package containing them, or else notice in writing of their nature must be given to the company at the time of delivery to the company. If any person sending such inflammable or explosive substances does not observe this regulation, he is liable to a penalty of 20*l.*, which goes to the company.

Besides this, if the dangerous goods, of the nature of

(*n*) See *Lewis v. G. W. Ry. Co.* (1860), 5 H. & N. 867; *Moore v. G. N. Ry. of Ireland* (1882), 10 L. R. Ir. C. L. 95; *Leonard v. G. N. Ry. of Ireland* (1912), 46 L. L. T. 224; *O'Keefe v. G. W. Ry. Co.* (1920), 123 L. T. 269; *Wade v. L. & N. W. Ry. Co.*, [1921] 1 K. B. 582. But see *contra*, *Murphy v. M. G. W. Ry. Co.* (1903), 2 I. R. 5.

(*o*) As to sale of perishables see *Sims v. Mid. Ry. Co.*, *post*, p. 69.

which the company were ignorant, were to do any actual harm either to person or property, the consignor would be liable to an action for damages for the harm done (*p*). Goods of other consignors might be destroyed in this way. If such goods were being carried at company's risk the company would be liable to the owners, but could probably recover from the sender of the dangerous goods the compensation which they have to pay to those owners. If the goods were being carried at owner's risk, then the company is most likely protected, but the owner of the goods would, in that case, most probably have a right of action against the wrong-doer who sent the dangerous articles without notice. Such wrong-doer also would be liable in damages for any personal injury caused by the dangerous goods to a servant of the company injured by them in the course of his duty (*q*).

This provision as to dangerous articles does not apply to ammunition, &c., intended for the use of His Majesty's forces, which all companies are bound to carry, upon fair terms to be agreed with the Government.

If a company is offered a parcel for carriage which they reasonably suspect to contain dangerous goods, they may (by the same section) require the parcel to be opened to ascertain the contents. It may be here noticed that a railway company have no general power in the absence of such suspicion to open any parcel delivered to them for carriage, or to require any such parcel to be opened for the purpose of ascertaining its contents (*r*). If, however, any difference arises as to the quality or nature of the goods, they have a right to inspect them.

As a railway company are under no obligation to carry dangerous goods at all, they may make their own terms for carrying them, and the Act of 1854 does not apply to the conditions; but the charges made must be reasonable (*s*). It is for the company themselves to decide

(*p*) See *Bamfield v. Goole and Sheffield Transport Co.*, [1910] 2 K. B. 94.

(*q*) See *Farrant v. Barnes* (1862), 31 L. J. C. P. 137.

(*r*) See *Crouch v. L. & N. W. Ry. Co.* (1849), 2 Car. & K. 789.

(*s*) Rates and Charges Order Confirmation Acts, 1891, Part IV.

whether goods are, or are not, "of a dangerous nature"; and the Courts will not interfere with the discretion of a company in so deciding, provided they decide *bonâ fide* (t). In respect to the carriage of such goods, there are a great many forms of consignment notes in use, most of which relieve the company from all liability whatsoever in respect of the carriage, except perhaps in case of fraud or misconduct on the part of a servant. The consideration for this agreement is the consent of the company to accept the goods.

The Act requires railway companies to give facilities for through traffic on their own lines and those of other companies; and a very large amount of the traffic of the country is through traffic. If a company accept goods to be carried to a place on the system of another company, the receiving company make a contract with the consignor, and contract to carry the goods all the way to their destination. The receiving company are then liable for the whole transit, even if loss or injury is caused on the line of the second company. This liability may, of course, be modified by contract, but if there is no special contract the receiving company are under all the liabilities of a common carrier for the whole transit (u). If a special contract is made which contains binding conditions limiting liability, those conditions apply throughout the whole transit (x). In the ordinary company's risk consignment note no attempt is made by the receiving company to avoid liability for loss or injury on the second company's line; by the general conditions, however, every company protect themselves from liability after delivering the goods to a carrier who is not a railway company where the destination is a place beyond the limits of the company's free delivery. A contract by which a company are relieved from liability for loss or injury by negligence after handing the goods over to another railway company or any other

(t) See *N. E. Ry. Co. v. Reckitt & Sons, Ltd.* (1913), 29 T. L. R. 573.

(u) *Muschamp v. Lancaster and Preston Ry. Co.* (1841), 10 L. J. Ex. 460.

(x) *Barratt v. G. N. Ry. Co.* (1904), 20 T. L. R. 175.

carrier is binding, although not signed by the consignor, as was decided in the case of *Zunz v. South Eastern Ry. Co.* (y). In that case it was held that the Railway and Canal Traffic Act, 1854, applies only to the traffic on a company's own line, *i.e.*, on a line belonging to or worked by the company. Hence the provisions in the Act which require a contract limiting liability to be signed and to be reasonable, do not appear to apply to a contract relating to traffic on another company's line. A company are therefore at liberty to make any contract with regard to the goods after they have once been handed over to another company, and such contract cannot be held to be void on the ground of being unjust and unreasonable.

In a through contract, the second company seem to carry as the agent of the receiving company, and the latter remain liable whether loss or injury occurs on their own line or on the line of the second company. If the receiving company accept the goods only upon the condition that they will be under no liability after they have transferred the goods safely to the second company, the first company are probably acting as the agent of the consignor in handing over the goods to the second company, and also as the agent of the second company in agreeing to carry the goods to their destination. If this view is right, the second company will be liable, as common carriers, if no conditions limiting liability generally were made, or with the benefit of any valid conditions for the whole transit made with the receiving company. In any case, however, the second company will be liable if it can be proved that any loss or injury against which no conditions protect them, did actually arise from the negligence of themselves or of their servants. Whether the second company can be said to have made any contract with the consignor or not, by the mere fact of accepting the goods for carriage they owe a duty to him to use reasonable care in the carriage of those goods; and if it can be shown that they are guilty of negligence and so

(y) (1869), L. R. 4 Q. B. 539. See p. 134, *post*.

have not fulfilled that duty, they are responsible for the consequences (z).

The second company, however, are not liable unless it can be shown that the loss or injury occurred on their line. In *Tuohy v. Great Southern and Western Ry. Co.* (a) goods were sent from Manchester to Limerick by the Lancashire and Yorkshire Railway Company, who made a through contract to deliver in Limerick. On delivery it was found that the goods were injured, and the consignee sued the defendant company, by whose railway the goods were carried from Dublin to Limerick. There was no evidence to show on what part of the journey the damage had been done. It was held that in the absence of evidence that the injury was done on their line the defendants were not liable.

Where the receiving company contract that they are not to be liable after handing over the goods to another company, and the goods are lost or injured, it is not necessary for the consignor to prove on which line the loss or injury occurred; in such a case the receiving company cannot escape liability unless they can prove positively that they did in fact hand over the goods safe and sound to the second company (b).

Railway companies can only own or work ships under powers conferred upon them by Act of Parliament. Many companies have now obtained such powers and carry on business partly by land and partly by sea. This applies principally to traffic with the Continent and with Ireland. It depends on the Act of Parliament which has given such powers to a company whether the Railway and Canal Traffic Act, 1854, applies to traffic in such ships (c). Where that Act is extended to traffic in a company's ships a contract to carry wholly by sea, as well as one to carry partly by sea and partly by land, is affected by the Act (d);

(z) See *Foulkes v. Met. District Ry. Co.* (1880), 5 C. P. D. 157.

(a) [1898] 2 Ir. R. 789.

(b) See *Kent v. Midland Ry. Co.* (1874), L. R. 10 Q. B. 1.

(c) See *The Stella*, [1900] P. 161, at p. 169.

(d) *Jenkins v. G. C. Ry. Co.*, [1912] 1 K. B. 1.

and traffic by sea is on the same footing as traffic by land so far as regards conditions limiting liability (e). In such circumstances a condition limiting a company's liability for negligence for the sea part of a transit is void unless the consignor is given an option and has the alternative of sending his goods by sea at the company's risk for a reasonable charge (f). There are many dangers incident to carriage by sea, which have nothing corresponding in carriage by land ; and loss or injury at sea is much more likely to happen from causes quite outside the control of the company. It is, therefore, provided by sect. 14 of the Regulation of Railways Act, 1868, that where a company by through booking contract to carry goods from place to place partly by railway and partly by sea, a condition exempting the company from liability for loss or damage arising from " the act of God, the King's enemies, fire, accidents from machinery, boilers and steam, and all and every other dangers and accidents of the seas, rivers and navigation, of whatever nature and kind soever," shall be valid as part of the contract between the consignor and the company, provided that the condition is published in a conspicuous manner in the company's receiving office, and also legibly printed on the receipt or note given to the consignor. This condition, therefore, which is included in the general conditions, is binding, if notified in the way required, although not signed by the consignor ; but it obviously can have nothing to do with the land part of the transit.

(e) *Western Electric Co. v. G. E. Ry. Co.*, [1914] 3 K. B. 554.

(f) *Riggall & Sons v. G. C. Ry. Co.* (1909), 14 Com. Cas. 259.

CHAPTER IV.

DUTIES OF CONSIGNOR.

IN order that a railway company may become responsible to the full extent of their contract for the goods entrusted to them, there are certain obligations which must be observed by the consignor. The first of these is to see that his goods, if they are of a nature to require packing, are properly and securely packed.

If goods are injured in transit entirely because they have not been properly packed, the company are not responsible. A common carrier is an insurer, and insures against the negligence of persons over whom he has no control as well as against the negligence of himself and his own servants; but he does not insure against the negligence of the consignor himself. There are many classes of goods which cannot be sent by railway with safety, unless they are properly protected by packing from the ordinary and inevitable incidents of the journey. It is the duty of the consignor to see that such goods are so securely packed as to be protected from such incidents. And if the consignor fails in this duty, and the goods are injured because of such failure, as a general rule the company are not liable even though they are carrying without any special contract (a). Very brittle articles, like glass for example, when sent in boxes or cases by railway, require very careful packing, otherwise they will probably be injured by almost any movement. Boxes containing such things are often delivered for carriage to railway companies without anything at all to show the nature of their contents. When this is so, the company are only bound to take care of them to the

(a) See *Hart v. Baxendale* (1867), 16 L. T. 390.

extent which is ordinarily necessary with boxes of similar appearance. If such care is taken of them, but nevertheless the brittle articles inside are broken through not being properly packed, the company are not responsible, and cannot be compelled to make good the damage. If the company are informed of the contents, then they are put on their guard, and may sometimes make a higher charge to compensate them for the greater risk and trouble which such things entail. They also, too, when so informed, have generally an opportunity of observing the packing, and perhaps may require some improvement before accepting the goods. But even if they know the contents, they may have no opportunity of inspecting the packing; and then they are not liable for injury if they take reasonable care of the goods considering their nature, and the injury is caused by the goods not having been packed with that care which the consignor is bound to use and the company has the right to expect.

If the company see that goods offered for carriage are so improperly packed that the risk of carrying them is substantially increased, they may lawfully refuse to accept them until they have been properly packed (*b*). If they have the opportunity of observing the quality of the packing when the goods are tendered, and accept them in that condition the circumstances may be such as to raise a presumption that the company have admitted the sufficiency of the packing and agreed to carry them as packed. In such case they will be responsible for damage even if the packing was in fault and contributed to the injury (*c*). But the mere fact that the company's servants see at the time of receipt that the goods are not properly packed will not preclude them from setting up as a defence that injury suffered in transit was due to improper packing (*d*).

It is the duty of a trader to deliver goods to a railway

(*b*) See *Munster v. S. E. Ry. Co.* (1858), 4 C. B. N. S. 676, per Williams, J.

(*c*) *Richardson v. N. E. Ry. Co.* (1872), L. R. 7 C. P. 75.

(*d*) *Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186.

company in a condition reasonably fit for conveyance ; and if the goods are delivered not in such a condition the company may make them fit, and may charge the consignor a reasonable sum for their services in so doing (e).

When a company have goods offered to them for carriage which are not properly packed, and which are easily damageable, they may, as has been said, refuse to accept them ; but the usual course is to offer to carry them on condition that the consignor signs a consignment note in the following form :—

“ To the X. Railway Company.

“ In consideration of your receiving and forwarding the under-mentioned goods, not properly protected by packing, and of the consequent saving to me of the cost of packing, and of the reduced weight of the consignment, and of any other advantage which I derive therefrom, I agree to relieve the X. Railway Company from all liability for loss or injury to the same, except upon proof that such loss or injury arose from wilful misconduct on the part of the company's servants. This agreement shall be deemed to be separately made with all companies or persons who shall be carriers for any portion of the transit (herein respectively referred to as the company), and to include the conditions endorsed hereon.”

In this consignment note notice is given to the consignor that the company refuse to be carriers of certain damageable goods except when they are properly protected by packing, and that the rates quoted for such goods only apply to them when so packed. Then follows a list of about 150 of such goods, with a note that the list is not exhaustive, but that the company reserve the right of adding to it.

In *Sutcliffe v. Great Western Ry. Co.* (d) the plaintiff was a manufacturer of wooden flushing cisterns lined with lead, each of which had a lever attached which projected from the cistern. For many years the plaintiff had sent large numbers of these cisterns by the defendants' railway at company's risk, at ordinary rates and unpacked. Some 20 per cent., however, of the cisterns were injured

(e) *Littleton Collieries v. L. & N. W. Ry. Co.* (1916), 85 L. J. K. B. 1481.

(f) [1910] 1 K. B. 478.

in transit through these levers being broken, owing (according to the company) to their brittle nature and to the fact that they were not properly protected by packing. The company accordingly gave the plaintiff notice that they would not be carriers of these goods except when they were properly packed. The plaintiff then had either to pack these goods or else to send them under the contract above mentioned, although in fact these particular goods were not named in the list. He chose the latter alternative. There was no alternative rate offered. Certain consignments of these cisterns sent under this contract having subsequently been damaged in transit by having the levers broken, the plaintiff sued the company for damages. The Court of Appeal, however, held that the company were not obliged to carry these goods unless they were properly protected by packing, that the conditions in the signed consignment note were just and reasonable, and that the company were protected from liability by their contract.

This contract, so far as it exempts the company from liability for *injury*, is therefore reasonable. There is a clear admission that the goods are not packed as the company have a right to require that they should be packed; and it seems only reasonable that if they waive this right and accept the goods, they should in return be protected from liability for negligence and from vexatious inquiries as to whether damage caused was due to imperfect packing or otherwise. The same considerations, however, do not necessarily apply to *loss*; and it will be noticed that the contract does not attempt to protect the company from liability for delay or misdelivery. Injury may be caused by bad packing, but neither loss, delay nor misdelivery are as a rule likely to be so caused; and it has been held that a condition that a company will not be liable for the loss or delay of improperly packed goods is unreasonable (*g*).

(*g*) See *Garton v. Bristol and Exeter Ry. Co.* (1861), 30 L. J. Q. B. 273.

In *Baldwin v. London, Chatham and Dover Ry. Co.* (*h*) certain bales of rags were sent by the defendants' railway to a consignee who was a paper manufacturer. The bales were marked "Rags," and should, in the ordinary course, have been delivered within twenty-four hours. By mistake, however, they were sent to the wrong place and lost sight of, and in consequence they were not delivered for over a fortnight. It was then found that the rags had heated and rotted, and they had to be destroyed. The plaintiff sued the company for their value. It was proved at the trial that the rags had been packed in a damp state, and that rags so packed will heat, rot and become worthless in a few days—much less than a fortnight. It was also admitted that the company had no notice that the rags were in a damp state. The actual delay caused no loss to the plaintiff, and if the rags had been properly packed, a delay of six months would not have injured them. As, therefore, the damage was caused, not by the delay, but by the improper packing, it was held by the High Court that the plaintiff was not entitled to succeed in his action.

Sometimes goods are so packed that they can only be carried safely in a certain position. It is doubtful whether a railway company can be required to accept such goods; probably they may refuse to do so except upon reasonable conditions. If, however, a company accepts goods plainly marked with such a direction as "This side up," they will probably be held to be responsible for any damage which is caused by carrying the goods in any other position. In an American case, *Hastings v. Pepper* (*i*), a case was delivered to a carrier containing a very large glass bottle full of a valuable oil. The case was labelled on the top, "Glass, with care—this side up." The case was accepted without objection, but was carried on its side, not as directed. The result was that the bottle was broken and its valuable contents were lost. In an action to recover damages from the carrier for the value of the

(*h*) (1882), 9 Q. B. D. 582.

(*i*) (1831), 11 Pick. 41.

oil, it was held that, as the damage was caused by the carrier's neglect of the direction as to the position in which the goods were to be carried, he was liable.

It will probably occur to the reader that, after the packing of goods, the next thing for the consignor to do is to label or address them. It is his duty to address them plainly and legibly, and with so full an address that the consignee may be easily found. If this duty is not performed, and if the goods are lost or delayed in consequence of the address being insufficient, the company will not be responsible. Here, again, the fault is in the consignor himself; and, as in the case of loss from improper packing, no one is entitled to claim compensation from a carrier for damage occasioned by his own neglect to do what it was his duty to do.

This principle is well illustrated by a Scotch case, *The Caledonian Ry. Co. v. Hunter (k)*. A parcel of goods was delivered to the railway company at Glasgow, labelled, "Wm. Rae, draper, Sudbury." Now there are in fact several places called Sudbury. There is one in Derbyshire, another in Suffolk, and another in Middlesex. The company sent the parcel to Sudbury in Derbyshire, which was the nearest, but on arrival the consignee could not be found. Considerable time was then spent in finding the consignor and ascertaining his wishes with regard to the goods. It was at last discovered that the goods were intended for Sudbury in Suffolk, and in rather over a month from the time of starting on its journey the parcel was tendered to the consignee. He, in consequence of the delay, refused to accept them, and they were thrown back on the consignor's hands, who sued the railway company for damages for the delay. He did not succeed, however, for the judges were of opinion that the delay was primarily his own fault for addressing the parcel so ambiguously; that in the circumstances the company had acted reasonably in sending the goods to the nearest place of the name; and that carriers are not responsible for

(k) (1858), 20 Sess. Ca. 2nd Ser., 1097.

delay when caused by the address on the goods not being full, distinct, and ample.

Sometimes goods are addressed merely by affixing to them a mark, no name of consignee or place of destination being placed upon the goods themselves, but the full address being written in the consignment note, with a reference to the mark. Railway companies are not obliged to accept goods addressed in this way, for clearly the risk of loss or delay is greatly increased by such a method of address. If, however, a company do accept goods so addressed, then their liability is the same as if the goods were fully addressed, provided the address in the consignment note is sufficient.

With regard to packing and addressing, the general conditions on the back of the ordinary consignment note provide that the company shall not be liable for "loss or damage caused by insufficient or improper packing," or for "loss or delay due to inadequate or incorrect address or imperfect labelling." These conditions seem to be merely statements of the law.

After the goods have been packed and labelled, the next point to consider is the actual delivery of the goods to the company. As a rule the company cannot refuse to accept goods, but their liability as carriers does not commence until they have accepted them. If any person seeks to make a railway company responsible for the loss of goods entrusted to them, the first thing he must prove, unless the company admit it, is that he did in fact deliver the goods to the company, and that the company did in fact accept the goods. Delivery to a railway company is effected by delivery to a servant or agent of the company who has authority to accept delivery.

If a person were to put an addressed parcel into a van, as the train stood at a station platform, without communicating with any servant of the company, the company would not be responsible for that parcel. It has, in a sense, been delivered to them, but they certainly have not accepted it. Personal luggage, however, put into a train by the passenger or his servant without objection

by the company would probably be held to have been constructively accepted by the company (*l*).

Again, if a parcel be handed to a servant of the company who has no authority to receive such parcels, the company are not responsible (*m*). If, however, in the circumstances a person is justified in supposing that a servant of the company to whom he entrusts goods has authority to receive them, the company may be held liable for the goods and may not be allowed to prove that in fact the servant had no such authority (*n*).

In all cases where a servant or an agent has authority to receive goods, delivery to and acceptance by that servant or agent is a good delivery to the company, and the company immediately become responsible.

If goods are delivered at any office of a company which is used for receiving such goods, and there accepted by any person who appears to be a servant of the company, the delivery is complete. Also where a company recognize any place (such as a village shop, for example) as a receiving office for goods, they are responsible for goods delivered at that place from the time they are so delivered; and if a company allow any person to receive goods for them, they are responsible as carriers for the goods from the time they are delivered to that person, even though he is not paid for receiving them.

A company are not bound to accept goods to be forwarded by a certain train unless the goods are delivered a reasonable time before the time for the departure of that train (*o*). The consignor must allow the company reasonable time in which to weigh, book and otherwise deal with goods; and if the company have a staff sufficient to deal with the ordinary traffic of the station without undue delay, they will not be bound to receive goods for a certain train if such time is not allowed, nor will they be responsible for delay from such cause.

(*l*) See *Jenkyn v. Southampton Steam Packet Co.*, [1919] 2 K. B. 135.

(*m*) *Slim v. G. N. Ry. Co.* (1854), 14 C. B. 647; *Harrison & Crossfield, Ltd. v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 753.

(*n*) *Soanes v. L. & S. W. Ry. Co.* (1919), 35 T. L. R. 267.

(*o*) See *Nicholls v. N. E. Ry. Co.* (1888), 59 L. T. 137.

CHAPTER V.

DELIVERY TO THE CONSIGNEE.

EVERY carrier is under an obligation to deliver the goods carried safe and uninjured, to deliver them within a reasonable time, and to deliver them to the right person.

The carrier may be protected by special agreement from liability in respect of any or all of these duties. For example such an agreement may have the effect of freeing the carrier from liability as insurer and leaving him liable only for his negligence. When the carrier is in this position the owner of goods who alleges negligence must, as a general rule, bear the burden of proving negligence. But usually the mere fact that goods are damaged in transit raises a presumption of negligence. When goods are injured while in the custody of a carrier, in circumstances from which a natural inference arises that the damage was caused by negligence, the burden of proof is on the carrier to disprove such negligence (*a*). There is, however, a difference in this respect between animate and inanimate goods. In the case of animals, there is no inference of negligence if the facts are consistent with the animals having injured themselves; but where inanimate goods are delivered seriously damaged a presumption generally arises of negligence on the part of the carrier (*b*). Where he is not protected by agreement or by the common law, the carrier must deliver the goods in as sound a condition as he received them, or he is liable to pay damages to the owner (*c*).

(*a*) *United Machine Tool Co. v. G. W. Ry. Co.* (1914), 30 T. L. R. 312. See *Travers v. Cooper*, [1915] 1 K. B. 73.

(*b*) See *Smith v. Mid. Ry. Co.* (1888), 57 L. T. 813; and *Jolley v. G. E. R.*, cited therein *ibid.*, p. 814. See also *post*, p. 106.

(*c*) As to measure of damages, see *post*, pp. 83-88.

With regard to delay in delivery, a common carrier is not an insurer against delay, and he is not responsible for loss caused by delay when that delay is not due to any negligence on his part. He is, however, bound to deliver the goods within a reasonable time, considering all the circumstances of the case. The carrier is bound to carry safely, and he must consider safety before speed. He is justified in delaying delivery if the safety of the goods demands it. He must not, however, be dilatory or negligent in performing his duties. He is bound to use all reasonable diligence in order to deliver the goods within a reasonable time.

It is impossible to lay down any hard and fast rules as to what is a reasonable time: that must depend on the circumstances of each individual case. If the delay appears to have been unreasonable, then the question arises, who was to blame for the delay? If it was the fault of the carrier or his servant, the carrier is responsible unless protected by contract. If it was the fault of some other person over whom the carrier has no control, then the carrier is not responsible.

In *Taylor v. Great Northern Ry. Co. (d)* the plaintiff sent certain hampers of poultry, from a place in Lincolnshire, to London, by the defendants' railway, no special contract being made. At that time the Midland Railway Company had running powers over a portion of the defendants' line. Whilst running on the defendants' line an accident happened to a Midland Company's train through the negligence of their own servants. The result was that the defendants' train in which the plaintiff's poultry were being carried was seriously delayed, the market was lost, and the plaintiff suffered loss in consequence. He sued the defendant company, therefore, for damages. It was contended, on behalf of the company, that as the delay was entirely due to the negligence of the servants of the Midland Company, over whom they had no control, and as they had used all reasonable exertions to deliver

(d) (1866), L. R. 1 C. P. 385,

the goods in time, they were not responsible. The High Court adopted this view and decided that the defendants were not liable. Erle, C. J., said :—" I think a common carrier's duty to deliver safely has nothing to do with the time of delivery ; that is a matter of contract, and when, as in the present case, there is no express contract there is an implied contract to deliver within a reasonable time, and that I take to mean, a time within which the carrier can deliver, using all reasonable exertions " ; and Byles, J., said :—" The first duty of a common carrier is to carry the goods safely, and the second, to deliver them ; and it would be very hard to oblige a carrier, in case of any obstruction, to risk the safety of the goods in order to prevent delay. His duty is to deliver the goods within a reasonable time. I think reasonable time means a reasonable time looking at all the circumstances of the case. The delay in this case was an accident, as far as the defendants were concerned, entirely beyond their control, and therefore I think they are not liable." In *Briddon v. Great Northern Ry. Co.*, a case already referred to (e), a company were held not to be liable for delay caused by a great snowstorm.

In *Sims v. Midland Ry. Co.* (f) a consignment of butter was accepted by the defendant company for delivery to the plaintiffs. Very soon after so accepting the goods, a general strike of railway servants broke out. The defendants' servants joined in the strike and in consequence the defendants were unable to forward the goods. The weather being hot the butter began to deteriorate rapidly, and to avoid heavy loss the company sold the butter. The plaintiffs then brought an action for damages for failure to deliver the goods. The High Court held, however, that the defendants were not liable ; that in calculating what was a reasonable time for delivery they were entitled to take into account the strike of their servants, there being no evidence that the strike was brought about by the company's own fault ; and that, as the goods were perish-

(e) See p. 6, *ante*.

(f) [1913] 1 K. B. 103.

able and would have become utterly worthless if the company had retained them until they were able to deliver them, the company were right in selling them. But where it is reasonably possible in such circumstances to communicate with the consignor before selling, so as to ascertain his wishes, this ought to be done (*g*).

The general conditions endorsed on the ordinary consignment notes now provide that the company shall not be liable for "loss damage or delay caused by or arising out of any strike or riot." They also provide that—

"Perishable articles (*a*) refused by the Consignee or (*b*) not taken away from the place to which they are consigned within a reasonable time after arrival or (*c*) insufficiently addressed or (*d*) not delivered in consequence of strike or riot may be sold without any notice to Sender or Consignee and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be equivalent to delivery."

Sometimes delay is caused by a sudden, unusual, and unexpected press of business. If delay arises from this cause, a railway company will not be liable if they have used all reasonable diligence. A railway company is bound to give reasonable facilities for forwarding goods, but even at the largest station there is a limit to the powers of the company. And if from some cause, which the company had no reason to foresee, or which they could not avoid, they are overwhelmed with an extraordinary amount of traffic, delay is probably unavoidable; but if the servants of the company do their best, as far as can reasonably be expected, the company will not be liable for delay so caused. If called to account, however, for delay from such a cause, the company will probably have to prove that the sudden pressure was such as could not have reasonably been foreseen; or that it was so great that they did not possess the machinery necessary to deal with it. If, in the midst of such a blockade of traffic, goods are offered for transport which the company know must in the circumstances be delayed, they should inform the consignor of the likelihood of delay.

(*g*) *Springer v. G. W. Ry. Co.* [1921] 1 K. B. 257.

If they do not so inform him, the company will probably be held liable for the delay. The same applies in other cases, where, in consequence of an accident or otherwise, goods are received which the company know must be delayed. Where there is such a blockade of traffic, goods should, as far as reasonably possible, be forwarded in the order of time in which the company received them. Thus, in *Page v. Great Northern Ry. Co. of Ireland* (*h*), it was the usage of the defendants to forward cattle in the order in which they were delivered to them. The plaintiff delivered a lot of cattle to be forwarded, and a very large number of cattle belonging to other persons were delivered soon afterwards. The company were not able to deal with them all at once, and forwarded cattle which were accepted after the plaintiff's before they forwarded the plaintiff's. The result was that the plaintiff's cattle were delayed, and he suffered loss. He sued the company for damages for delay, and recovered.

If a railway company contract to deliver within a certain time, they must, of course, carry out their contract or bear the consequences. But a contract to carry goods by a certain train, which ordinarily arrives at its destination at a certain time, does not amount to a contract that the goods shall arrive at that time; and a condition that the company shall not be liable for loss of market, provided goods are delivered within a reasonable time, has been held to be a reasonable condition (*i*). The mere fact, however, of a train arriving several hours late would be sufficient to call for some explanation from the company, and to throw upon them the burden of proving that such delay was not due to negligence on their part (*k*).

When a company undertake to carry goods, they undertake to carry them by their ordinary route. They are not obliged to carry them by the shortest route; they

(*h*) (1868), 2 Ir. R. 228.

(*i*) *Lord v. Mid. Ry. Co.* (1867), L. R. 2 C. P. 339. See p. 52, *ante*.

(*k*) *Roberts v. Mid. Ry. Co.* (1877), 25 W. R. 323.

may carry them by a longer route if that is in the ordinary course of business (*l*). If they unnecessarily deviate from the usual route, and delivery is delayed in consequence, the company will be responsible; but the goods may be carried by as long and circuitous a route as the company please provided no delay or other injury is caused thereby, unless the company have agreed to carry by a certain route.

In most "owner's risk" contracts it is a condition that the company shall not be liable for delay in transit, unless such delay is proved to be due to wilful misconduct on the part of a servant of the company. Where there is some advantage to the consignor, as consideration for signing such a contract, the condition will be considered, as a rule, to be just and reasonable (*m*). By the forms of such contracts in general use, however (*n*), every company consents to accept liability for delay beyond a certain time (which varies with the class of goods), provided such delay was not due to accidents to trains or fire, and unless the company are able to prove that the delay was not caused either by negligence or misconduct on the part of them or their servants. They therefore accept the onus of disproving negligence in most cases of alleged delay.

Under an owner's risk contract, however, the company will only avoid liability where the delay is delay in the course of carrying out their contract. If they do not carry out their contract, but do something quite different from what they have contracted to do, they may be liable. Thus the company would be held liable if they did not send the goods at all; and it has been held that they would be liable if they sent them by a route entirely different from that agreed upon (*o*). In *Mallett v. Great Eastern Ry. Co.* (*p*) the plaintiff delivered a consignment of fish to the defendant company at Lowestoft to be

(*l*) *Hales v. L. & N. W. Ry. Co.* (1863), 32 L. J. Q. B. 292.

(*m*) See p. 48, *ante*.

(*n*) See p. 49, *ante*, and p. 250, *post*.

(*o*) *Hales v. L. & N. W. Ry. Co.*, *supra*. (*p*) [1899] 1 Q. B. 309.

carried to Jersey *via* the Great Western Railway and Weymouth, and signed a contract by which, in consideration of a reduced rate, he agreed to relieve the company "from all liability for loss, damage, misdelivery, delay or detention, except upon proof that such loss, damage, misdelivery, delay or detention arose from wilful misconduct on the part of the servants of the company." The defendants, by mistake, sent the fish by London and South Western Railway and Southampton, which was the longer route. The weather was very stormy, and although the steamers by each route were timed to arrive at the same time, the one by the longer route was more likely to be delayed, and the plaintiff had therefore expressly chosen the other route. The result was, that the fish arrived in Jersey too late for the market for which it was intended, and this action was brought for damages for the loss suffered. The High Court held that the company were liable, and that the consignment note afforded them no protection, as the company had sent the goods by a different route from that agreed; that the delay referred to in the consignment note was a delay in performance of the contract, but the delay which occurred was due to the defendants doing something wholly at variance with the contract. The case of *Foster v. Great Western Ry. Co.* (q) was a very similar case, but the decision was in favour of the company. Here the plaintiff sent a consignment of fish by the defendants' railway from Brixham to Jersey *via* Southampton and the London and South Western Railway under a similar consignment note. The fish was duly despatched from Brixham, and should have been taken out of the train at Exeter and transferred to the South Western Company for carriage to Southampton. By mistake, however, it was carried on to Taunton. It was then too late to send it back in time to catch the Southampton boat; so, in order that it should reach Jersey as soon as possible, it was sent to Weymouth and thence by the Great Western Company's

boat. Instead of reaching Jersey in the morning, therefore, the fish arrived in the evening, and the weather being very hot it had greatly deteriorated in value, and for this loss the plaintiff sued. The High Court held the company were not liable, as they were protected by the contract. The Court distinguished this from *Mallett's case*, because, in this case, the fish did start on the route contracted for, and went upon that route as far as Exeter, where a mistake occurred. This was a mistake in carrying out their contract, not the doing something wholly at variance with the contract. The two cases, however, are difficult to reconcile. It should be noticed that in *Mallett's case* the goods were intentionally, though negligently, sent on a wrong route and in consequence were delayed. In *Foster's case*, on the other hand, the goods by mistake were carried on their proper route past the point where they should have been transferred. When the mistake was discovered it was too late to catch the intended boat. If the company had then sent the goods back to Exeter so as to forward them by the agreed route they would have been protected by their contract, but the delay would have been greater than it was. On finding out their mistake, however, they did their best to mitigate the damage by sending the goods by the quickest route, and in so doing they took a proper course. It seems only reasonable that they should not be held to have put themselves into a worse position by doing their best to minimize the mischief caused by their mistake.

In *Gunyon v. South Eastern and Chatham Ry. Co.* (r) the plaintiff sent a consignment of fruit from Sittingbourne to Glasgow by passenger train under a consignment note "for perishable and other merchandise carried by passenger train or other similar service to be carried at reduced rates, at owner's risk," by which the plaintiff agreed to relieve the company from all liability for loss, damage, misdelivery, delay or detention except upon proof of wilful misconduct. The goods were sent from Sittingbourne to London by a

(r) [1915] 2 K. B. 370.

passenger train, but from London to Glasgow they were sent by ordinary goods train and in consequence were greatly delayed in delivery at Glasgow and suffered much in value through deterioration. The plaintiff accordingly brought an action for damages in the High Court. The Court gave judgment for the plaintiff. It was held that the company were not protected by their contract, for it was of the essence of that contract that the fruit should be carried by passenger train; by forwarding the fruit by goods train the contract was not being carried out by the company, and the goods therefore were not being carried at owner's risk.

Since this case was decided the form of owner's risk consignment note in general use has been altered. Now the company contract out of all liability for loss, damage, *misconveyance*, misdelivery, delay or detention (*s*). The word "misconveyance" appears to be a new word in railway contracts, if not in the English language. It probably means conveyance in any way other than the way agreed or a reasonable and proper way. Conveyance by the wrong sort of train or the wrong route would be misconveyance within the meaning. If this word had been used in *Gunyon's case*, it is submitted, the company would have been protected by their contract.

Again, the carrier is bound to deliver the goods to the right person. This is generally the consignee, or the agent of the consignee, or some person nominated by the consignee. The carrier is always safe in delivering to the consignee, unless he has notice that some other person has a right to the possession of the goods.

Loss and delay are often caused by misdelivery, *i.e.*, by delivery at a wrong place or to the wrong person. If this misdelivery is due to the negligence of the consignor (as, for example, by imperfectly addressing the goods) and the company are guilty of no negligence, then the company are not responsible (*l*). As a general rule, if a company deliver goods at the place to which they are

(*s*) See *post*, p. 250.

(*l*) See p. 64, *ante*.

addressed in the ordinary course of business they have done all that they are bound to do. It is impossible for them to know whether the person who receives the goods at the place is really the consignee or not, or whether he has really authority to receive them. If, however, when goods are taken to the place to which consigned, and there are any circumstances sufficient to raise suspicion in the mind of a reasonable man as to the right of a person there to receive the goods, the company may be liable if they hand them over to such person without proper inquiry. For instance, if a parcel addressed to a house were handed to a man who happened to be standing on the doorstep when the company's servant arrived there, the company might be liable if it turned out that the man was a stranger, and that he misappropriated the goods. When the company have taken the goods to the address indicated and tried to deliver them there without success, the transit is at an end, and their liability as carriers is at an end. They are then in possession of the goods involuntarily, and are only responsible for them if they are guilty of negligence. In *Heugh v. London and North Western Ry. Co.* (u) the plaintiffs, who were Manchester merchants, had had dealings with a certain company in London. A man who had been in the employment of this company wrote, in the name of the company, ordering a quantity of goods. These goods were consigned by the defendants' railway to the company's place of business in London. The goods, on arrival in London, were sent by the defendants to the address indicated, but it was found that there was a board up that the premises were to let, and the caretaker refused to take in the goods. The company had, in fact, ceased to carry on business altogether, but the defendants knew nothing of that. The goods were then taken back to the defendants' station, and following their usual practice they posted an advice note to the consignees to the address on the goods, stating that the goods had been consigned

(u) (1870), L. R. 5 Ex. 51.

to them, and remained at the station at their risk, and would be delivered to them on production of the note. The man who had written the order by some means got possession of this note, and on producing it at the station, together with a delivery order signed by himself in the name of the consignees, the goods were delivered to him. The result was, that the goods were never heard of again, and the consignors sued the railway company for the amount of their loss. The jury found, as a fact, that the defendants were guilty of no negligence; and the High Court held that they were not liable, on the ground that, as carriers, they had done all they had contracted to do, the goods were left in their hands against their will, they had followed their ordinary and reasonable course of business in subsequently dealing with them, and were guilty of no negligence.

In *M'Kean v. M'Ivor* (x) the plaintiffs were also Manchester merchants. They had a traveller in Glasgow whose business it was to obtain orders for them for their goods. This person represented to his principals that he had obtained an order for a quantity of goods from "C. Tait & Co., of 71, George Street." There was, in fact, no such firm as C. Tait & Co., but the traveller had made arrangements at the address given to receive letters and parcels addressed to C. Tait & Co. The plaintiffs, on getting the order, sent the goods by a firm of carriers to "C. Tait & Co., 71, George St., Glasgow," and wrote to the traveller to his own address notifying the despatch of the goods. On arrival of the goods at Glasgow, the defendants, following the usual course of business, sent a notice to C. Tait & Co. at the address given, stating that the goods had arrived, asking the consignees to send for them, and informing them that the notice must be produced indorsed as a delivery order. The traveller received their notice, indorsed it with the name C. Tait & Co., and by this means got possession of the goods and fraudulently misappropriated them. The consignors sued

(x) (1870), L. R. 6 Ex. 36.

the carriers for damages for the loss of their goods, but the Court held that they were not liable. The consignors themselves, by giving directions that the goods were to be delivered to Tait & Co., at 71, George St., represented to the defendants that there was such a firm at that place, and the carriers had a right to assume that such was the fact. The carriers had acted according to their usual custom in giving the notice, and the delivery of the notice at the address was equivalent to delivery of the goods there. Martin, B., said:—"If the carrier delivers at the place indicated, or does what is equivalent to a delivery there, he does all that he is bound to do; he obeys the sender's directions, and is guilty of no wrong. To make him liable there must be some fault; it is a question of fact whether there has been any such negligence as makes him liable; and where he has carried out the directions of the sender, the mere fact that he has delivered the goods to some person to whom the sender did not intend delivery to be made is not sufficient."

There is no general rule that a railway company are bound to deliver goods at the house of the consignee. Whether the company are so bound depends on their general usage, or else on special contract. They are of course bound to deliver at the consignee's address if they expressly agree to do so; they are also so bound if such delivery is their usual custom, because in that case the contract with the consignor implies a promise by the company to deal with the goods in the ordinary course of their business. Thus, in a town, a railway company probably deliver within a certain radius all parcels arriving at their station except articles of great bulk. From a small country station, on the other hand, they probably do not deliver at the consignee's house at all.

Where a company have contracted to deliver at the address of the consignee, they are (it is submitted) under no legal obligation to convey the goods farther than the consignee's door, or entrance, or usual place of unloading. The consignee must himself carry the goods from along-

side the company's vehicle to the place where he wishes to dispose of them. On this subject the general conditions provide as follows—

“ When the Company perform the cartage the place of collection or delivery shall be the usual place of loading or unloading the goods into or from the road vehicles.”

“ The Consigner or Consignee shall provide at his own risk and expense any power plant and labour (in addition to the Company's carman) required for loading or unloading road vehicles.”

Where the company do not deliver at the consignee's house, they should, if his address is on the goods or is known to the company, give him notice that the goods have arrived at the station (*y*). Then it becomes the duty of the consignee to remove the goods within a reasonable time.

If the company do not deliver at the address indicated, they must deliver to the consignee or his agent or in accordance with his orders, unless they have notice that some person other than the consignee is entitled to the possession of the goods. If the company deliver to the wrong person, and the goods are lost in consequence, they will as a rule be liable, unless protected by an owner's risk contract (*z*). They are under this liability whether guilty of negligence or not in delivering to the wrong person. Thus, if goods carried at the company's risk are delivered to a person who fraudulently represents himself to be the owner in order to steal the goods, the company will be liable without proof of negligence.

If goods are delivered to the wrong consignee and he improperly uses or disposes of the goods, the company may recover from him such damages as they may have to pay to the real consignee for misdelivery (*a*).

Where goods are carried at owner's risk, the company, as a rule, are relieved of liability for misdelivery unless

(*y*) *Neston Colliery Co. v. L. & N. W. Ry. Co.* (1883), 4 Ry. & Can. Tr. Cas. 257. See p. 95, *post*.

(*z*) *Stephenson v. Hart* (1828), 4 Bing. 476; *Hoare v. G. W. Ry. Co.*, *infra*.

(*a*) See *L. & Y. Ry. Co. and others v. MacNicol* (1918), 118 L. T. 596

the misdelivery was due to "wilful misconduct" on the part of the company's servants. In *Hoare v. Great Western Ry. Co.* (b) the plaintiff sent sixty sacks of pollard by the defendants' railway to Mr. Jeeves, at Pewsey, and signed such a consignment note. The address was, in fact, given by mistake, and as Jeeves was not expecting any such goods, he refused to accept them. A few days afterwards a man named Jarvis applied to the station-master for a similar quantity of pollard, which he said he expected from quite another quarter. The station-master thereupon, without making any inquiries whatever, delivered the pollard to Jarvis, and in consequence the plaintiff lost his property and sued the railway company for damages. The company contended that they were protected by the contract signed by the plaintiff, as their station-master had been guilty of negligence, not of wilful misconduct. The Court, however, held that there was here wilful misconduct and that the company were liable. Lindley, J., said it was not necessary to show that there had been any criminal act on the part of the company's servant in order to establish wilful misconduct. Here the servant of the company was guilty of more than negligence; he did not inadvertently misread the written address, but deliberately delivered the goods to a man with another name. This was a wilful act which he must have known was wrong.

In *Stevens v. Great Western Ry. Co.* (c) the plaintiff delivered certain goods to the defendant company on 27th October under a similar contract to be carried to London and delivered to a certain firm. By mistake the goods were delivered to another firm, and the company lost sight of them and did not find them till 9th December. They were then tendered to the consignees and refused. The company then seem to have done nothing till the end of January following, when they acquainted the plaintiff with the facts. The plaintiff sued the company for damages and succeeded in the County Court on the

(b) (1877), 87 L. T. 186.

(c) (1885), 52 L. T. 324.

ground that such negligence amounted to misconduct. On appeal, however, the High Court decided that the company were not liable, as only misdelivery and delay had been proved against them. This misdelivery and delay might have been caused by mere negligence or by wilful misconduct. But no proof was given of misconduct, and he who alleges misconduct must prove it. Here only misdelivery and delay were proved without any explanation of the cause, and misconduct will not be inferred from the mere fact of misdelivery or delay. It will be seen from these two cases that delivery to the wrong person will not be presumed to be misconduct. There must be something else proved besides negligence to constitute misconduct, and that something must be of a serious or gross nature, though it need not amount to moral misconduct (*d*).

There are many kinds of misdelivery which in the circumstances may lead to mischief. For example, in *Macdonald v. David Macbrayne, Ltd.* (*e*), the plaintiff was the consignee of two barrels of paraffin. The defendants, carriers, by mistake delivered along with the two barrels a third barrel of similar appearance, but containing motor spirit, which was in fact intended for another consignee. The plaintiff's servant accepted the three barrels, not knowing how many his employer had ordered and believing all of them to contain paraffin. Accordingly they were put in the plaintiff's store as paraffin. Three weeks later a servant of the plaintiff went to the store with a naked light to draw paraffin. He tapped the barrel which in fact contained motor spirit, and the consequence was an explosion which caused very serious damage. In an action for damages it was held that the carriers were liable for this consequence of their misdelivery.

Where goods are entrusted to a railway company for delivery at a certain place, the owner of the goods has the right to change the place of destination, and require

(*d*) See pp. 41 and 46, *ante*.

(*e*) (1915), S. C. 716.

them to be delivered at some other place (*f*). The owner must, however, give his new directions to the company before the goods have reached the destination originally indicated, and so as to allow the company reasonable time to take the necessary steps. This right of changing the destination is only possessed by the owner of the goods, who may be either the consignor or consignee. In the absence of any notice to the contrary, however, the company is justified in assuming that the consignee is the owner and in obeying his directions (*g*). But if the consignor remains the owner of the goods, he has the right to change the destination. If required to deliver at a new place by the owner, the company are bound to deliver at that place, provided the place is one which they serve; and they may be liable for damages if they disregard the owner's directions unless protected by contract against liability for misdelivery. It is submitted that the ordinary owner's risk consignment note would protect the company against liability for such misdelivery, but this appears to be somewhat uncertain.

There is one case of very great importance in which the original place of delivery of goods may be changed before they reach it, or before they are handed over to the consignee:—that is, when the seller of goods exercises that right which is known as the right of stoppage *in transitu*. This right exists in one set of circumstances only, as follows:—Where goods are consigned by railway by the seller of the goods to the buyer, and the seller has not been paid for them, and the buyer becomes insolvent, as long as they are in course of transit the seller has a right to stop the goods and resume possession of them and may retain them until payment. If, in these circumstances, the consignor demands that the company shall redeliver the goods to him, and the demand is made while the goods are still in the hands of the company as

(*f*) *Scotthorn v. S. Staffordshire Ry. Co.* (1853), 22 L. J. Ex. 121.

(*g*) *Cork Distilleries Co. v. G. S. & W. Ry. Co.* (1874), L. R. 7 H. L. 269.

carriers, *i.e.*, before the transit is at an end, the company are bound to redeliver them, and they will be liable to an action for damages by the consignor if they fail or refuse to deliver the goods so demanded, in case loss is caused by such failure or refusal. This right of the consignor exists even though he has actually sold the goods to the consignee and so ceased to be the owner, provided he has not been paid. In these circumstances, if the goods reach the consignee, and he is declared a bankrupt, the goods will become part of the property to be realized for the benefit of his creditors. The unpaid seller then will only get a dividend of so much in the pound along with the other creditors. If, therefore, the railway company have wrongfully refused to redeliver the goods, they may have to pay damages to the seller to compensate him for his loss; that is, the company may have to pay the balance of the price of the goods after he has received the dividend.

The unpaid seller has the right to take possession of the goods if he can do so, but he is not likely to be able to do so without the company's concurrence. He need not give the company notice to stop in any particular form; *e.g.*, a request by telegraph may be sufficient. The notice may be given to the official of the company who has at the time actual control over the goods, or to the company; but if the notice is given to the company it must be given so as to allow the company time with reasonable diligence to give the necessary directions. The seller is bound to bear the expense of redelivery (*h*).

Where a railway company are responsible for loss, injury, misdelivery, or delay, they must pay such damages as will compensate the owner of the goods, and are the natural result of the company's default. If the goods are entirely lost or destroyed, the measure of the damage is, as a general rule, the market value of the goods at the time and place at which they ought to have been

[*h*] On stoppage *in transitu* see the Sale of Goods Act, 1893, ss. 44, 45 and 46.

delivered. If there is no market for the goods at the place of destination, then the damages may be ascertained by taking the price of the goods where delivered to the company, and adding to that the cost of carriage and any profit which the consignee might fairly be expected to have made by resale if the goods were intended to be resold (*i*). If the market value is ascertainable, and the carriage has not been paid, the cost of the carriage must be deducted from the market value. Where the goods are delivered to the consignee in an injured condition, the damages will be measured by the depreciation in the value of the goods which was the natural result of the injury.

The question of the measure of the damages in case of delay is much more difficult and complicated. Where there has been delay, for which the company are responsible, the damages payable are such as have arisen naturally from the delay in the ordinary course of things. It is clear that, owing to extraordinary circumstances, very heavy loss, often far in excess of the value of the goods, may be caused by delay. Thus, the delay of an article sent as a sample may cause the sender to lose a very large order. The sample may be worth a mere trifle, but the loss caused by the delay may be enormous. In such a case the loss is not recoverable from the railway company as damages, unless the peculiar circumstances were brought to their notice so that they may fairly be considered as having accepted the responsibility. If they were informed of the peculiar circumstances, then the damages are the natural result of their default, and may be recovered. If they knew nothing of those circumstances, the damages are not the natural result of their default in the ordinary course of things, and it must be assumed that there was nothing out of the ordinary in the circumstances if the company had no notice to the contrary. Where a company are informed of extraordinary circumstances which are likely to lead to heavy

(*i*) *O'Hanlan v. G. W. Ry. Co.* (1865), 34 L. J. Q. B. 154,

loss in case of delay, they may (probably) refuse to accept the goods with such responsibility except on special conditions; but where such circumstances are clearly brought to their notice, and they accept the goods without conditions, they will be responsible for any loss occurring due to those circumstances (*k*). Damages which are not recoverable because they arise from circumstances out of the ordinary course, and not known to the company, are said to be "too remote." In the general conditions on the back of the ordinary consignment notes such damages are referred to thus:—"The company shall not be liable for . . indirect or consequential damages."

In *Hadley v. Baxendale* (*l*) the plaintiffs were the owners of a mill at Gloucester. Owing to the fracture of the crank-shaft of the engine which set their machinery in motion the mill was stopped. It was necessary in order to get a new shaft from the makers of the engine to send the broken shaft to Greenwich as a pattern. The plaintiffs sent a servant to the defendants (the well-known firm of carriers known as Pickford & Co.), who told them that the shaft must be sent to Greenwich immediately, and inquired how soon it could be delivered. The answer was that if it were sent to the defendants any day before noon it would be delivered at Greenwich the next day. The shaft was accordingly sent to defendants before 12 o'clock the next morning, 2*l*. 4*s*. was paid for its carriage and the defendants' clerk was asked to hasten its delivery. By the negligence of the defendants, however, there was great delay in the delivery, and, in consequence, the making of the new shaft was postponed several days. The mill was accordingly kept idle for just that number of days more than it would have been if there had been no negligence, and the owners lost their profits for that number of days. They therefore sued the defendants, and sought to recover as damages this loss of profits.

{*k*} *Gee v. Lancashire and Yorkshire Ry. Co.* (1860), 30 L. J. Ex. 11; *Horne v. Midland Ry. Co.* (1873), L. R. 8 C. P. 131.

{*l*} (1854), 9 Exch. 341.

They did not succeed, however, as the Court held the damages to be too remote. The carriers did not know that the work of the mill was stopped for want of the shaft, and such a result was a very extraordinary result of the delay. If, however, the carriers had known the whole circumstances, and that every day's delay meant the loss of a day's profits, then they would have been liable for the whole loss. The Court laid down the following rules :—" Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, *i.e.*, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it. Now if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances from such a breach of contract. For had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case ; and of this advantage it would be very unjust to deprive them."

In *Collard v. South Eastern Ry. Co. (m)* the plaintiff sent a large quantity of hops in bags from a station in

(m) (1861), 30 L. J. Ex. 393.

Kent to London by the defendant company. There was an unreasonable delay in the delivery of the hops, and in that time prices on the Hop Exchange went down very quickly. When they were sold the hops realised 65*l.* less than they would have fetched if they had been sold on the day they ought to have been delivered. The plaintiff sued for this sum as damages naturally resulting from the delay. The defendants contended that the loss was not the natural consequence of their negligence, as they had no notice that the hops were intended for sale. The Court held, however, that the company were liable to pay the 65*l.*, for they have must known that the hops were probably for sale, and the loss was a direct, natural, and necessary consequence of the company's negligence. In *Simpson v. London and North Western Ry. Co.* (n) the plaintiff, who was a manufacturer of cattle-food, used to attend cattle-shows, where he exhibited samples of his goods in a show-tent, and obtained orders for various kinds of food. He had a tent for this purpose at a cattle-show at Bedford, and the defendant railway company had an agent and an office on the show-ground for the purpose of receiving and delivering goods. A few days after the close of the Bedford Show there was to be a similar show at Newcastle, at which the plaintiff wished to show his samples. The samples were accordingly packed in boxes and delivered to the defendants' agent on the ground to be carried to the show-ground at Newcastle. The agent knew the day on which the goods were required at Newcastle, and knew what the goods were and the purpose for which they were sent. There was, however, an unreasonable delay in the delivery of the goods, which caused them to miss the show altogether. The plaintiff sued the company for damages for loss of the profits he would probably have made by obtaining orders at Newcastle. The Court held that he was entitled to such damages, as the company knew the object with which the goods were being forwarded; and it is

the law that "whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to the carrier from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object." But where loss has arisen not only from delay, but also from some cause which the company knew nothing about and had no reason to suspect, the company will not be responsible. *Baldwin v. London, Chatham and Dover Ry. Co.*, a case previously referred to (o), is a good example of this. There the rags were delayed, but the delay alone would have caused no appreciable damage if the rags had been packed dry, as they ought to have been. The company had no notice that the rags were wet, and therefore were not liable for the damage from this cause.

Where goods are tendered to the consignee and he refuses to accept them, there is no positive legal obligation upon the company in all cases to give notice of the refusal to the consignor, but they should do what is reasonable in the circumstances (p). If, however, the consignor is known, it is generally the safer course for the company to give him such notice. Where the consignee refuses to pay carriage, and the company on that account refuse to deliver the goods, they should retain the goods for a reasonable time at their station of destination (q). There may be some misunderstanding between consignor and consignee as to who is to pay carriage, and a reasonable time should be allowed to clear this up.

Where a railway company is liable to be sued for default in the carriage of goods, the owner of the goods is the proper person to sue. In most cases this is the consignee, because, when goods are sold and delivered to a railway company for carriage to the buyer, such delivery

(o) (1882), 9 Q. B. D. 582. See p. 63, *ante*.

(p) *Hudson v. Bazendale* (1857), 27 L. J. Ex. 93.

(q) *Crouch v. G. W. Ry. Co.* (1858), 27 L. J. Ex. 345. See *post* p. 96.

usually makes the consignee the owner of the property (*r*).

The contract in such a case is usually in fact made by the consignor with the railway company, but it is considered in law as having been made by the consignor on behalf of, and as agent for the consignee. The consignee is bound by all the conditions of the contract, but is not bound by any private arrangement between the consignor and the company which is not incorporated in the consignment note (*s*). But where delivery to the company does not affect the ownership of the goods, as where goods are sent on approval, or where the consignor is under contract to deliver safely to the consignee, or otherwise where the goods are at the consignor's risk till delivery, the consignor is the proper plaintiff. A laundress was under contract to fetch, wash and return her customer's linen. She used to return it by carrier, paying carriage. In an action against this carrier for the loss of some linen belonging to a customer it was held that as she was responsible for the safe return of the linen she was entitled to sue the carrier (*t*).

(*r*) See Sale of Goods Act, 1893, s. 32.

(*s*) *L. & N. W. Ry. Co. v. Richard Hudson & Sons, Ltd.*, [1920] A. C. 324.

(*t*) *Freeman v. Birch* (1833), 3 Q. B. 492 *n*.

CHAPTER VI.

RIGHTS AND LIABILITIES AFTER TRANSIT.

THE liability of a railway company as carriers begins the moment they accept the goods for carriage, and continues until the end of the transit.

The transit in law may extend beyond the time of the actual journey. It is considered to include such time as the goods are in the hands of the company before being despatched on the journey, and also the time which intervenes between the end of the railway journey and the delivery to the consignee, or the happening of something else which terminates the transit (a). If the goods are actually delivered, the transit is at an end. And if the company tender delivery and acceptance is refused, the transit is equally at an end. It is also at an end where the consignee refuses to pay the carriage, and in consequence the company refuse to deliver. This is equivalent to a refusal by the consignee to accept. Where the company do not deliver the goods at the address of the consignee, and are not bound so to deliver them, they should, if possible and reasonable in the circumstances, give the consignee notice of the arrival of the goods at the station of destination. On receiving such notice it becomes the duty of the consignee to remove the goods within a reasonable time. What that time is must in all cases depend on the circumstances of the particular case. But as soon as a reasonable time has elapsed without removal the transit is at an end. Goods are often sent to a station, "to be called for"; in this case the company need not, as a rule, give notice of arrival. Very often, no other address than the station being given,

(a) *Chapman v. G. W. Ry. Co.* (1880), 5 Q. B. D. 278. See p. 92, *post*.

it is impossible to give such notice, and it may be presumed that the consignor has notified the consignee that the goods have been forwarded. In this case, if the goods are not called for and removed within a reasonable time, the transit is at an end. Again, it often happens that, either through the goods not being properly addressed or through the consignee having changed his residence, the company, on attempting to deliver the goods, are unable to do so; on so attempting the transit is at an end. The transit of the goods, then, lasts from the time the company accept the goods for transit until the transit is ended, which may take place either by—(1) actual delivery, or (2) tender and refusal to accept or refusal to pay charges, or (3) attempt to deliver and failure through no fault of the company, or (4) failure by the consignee to remove within a reasonable time after arrival or notice of arrival, or (5) by the company agreeing to warehouse the goods. As long as the transit lasts the liability of the company is that of a carrier. As soon as the transit is at an end the liability as a carrier ceases. The whole liability of the company, however, does not come to an end with the end of the transit unless the goods have been safely delivered. If they remain in the hands of the company after the termination of the transit, the company are liable for their safety, not as carriers, but as warehousemen.

As carriers the company, unless protected by agreement, are insurers of the safety of the goods—a very heavy responsibility. It would clearly be unjust if this responsibility could be prolonged at the option of the consignee, or by his delay or carelessness. Therefore, as soon as the transit is at an end, the company are no longer carriers, but ordinary bailees or warehousemen of the goods. A warehouseman is one who, as part of his business, has the care and custody of another man's goods. He is not an insurer. He is, however, bound to take all reasonable care of the goods, and is answerable for injury or loss caused by his own negligence or that

of his servants. He is not answerable for loss or injury if the goods are lost, injured, or destroyed through no negligence of himself or his servants. Hence, if goods are in the hands of a railway company after the transit is at an end, and they are stolen from their warehouse or destroyed by fire without any negligence on the part of the company or their servants, the company are not liable (b). Thus, in *Chapman v. Great Western Ry. Co.* (c), the plaintiff was a man who travelled about the country selling drapery goods. A parcel of such goods was delivered to the defendant company to be forwarded to the plaintiff at Wimborne station, and was marked "to be left till called for." It arrived at Wimborne on 24th March, and was placed in the station warehouse to stay till called for. It had not been called for, when on the morning of 27th March the warehouse was accidentally burned down and the goods consumed by fire. The plaintiff called for his goods on the afternoon of the same day, and was informed that they had been destroyed. He accordingly brought this action to recover their value from the company, but he failed, as his goods had been destroyed without any negligence on the company's part. Cockburn, C. J., said: The consignee "is entitled to reasonable time to demand or receive delivery. He cannot be expected to be present to receive delivery of goods which arrive in the night time, or of which the arrival is uncertain—as of goods coming by sea, or by a goods train, the time of arrival of which is liable to delay. On the other hand, he cannot, for his own convenience or by his own carelessness, prolong the heavier liability of the carrier beyond a reasonable time. He should know when the goods may be expected to arrive. If he is not otherwise aware of it, it is the business of the consignor to inform him. His ignorance—at all events, where the carrier has no means of communicating with him, which

(b) As to the liability of a company for goods left in a cloak room, see *post*, p. 130.

(c) (1880), 5 Q. B. D. 278.

was the case in the present instance—cannot avail him in prolonging the liability of the carrier, as such, beyond a reasonable time. When once the consignee is in fault by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as a warehouseman; he ceases to be liable in case of accident (*d*). What will amount to reasonable time is sometimes a question of difficulty, but a question of fact, not of law. As such it must depend on the circumstances of the particular case.”

As warehousemen, however, railway companies have very important duties. They are bound to take good care of the goods, and, on the other hand, they are entitled to charge a reasonable sum for taking care of them. If they do not take reasonable care of the goods in their custody as warehousemen, then they are responsible for any loss or damage due to such want of care on their part. In *Mitchell v. Lancashire and Yorkshire Ry. Co.* (*e*) it appeared that sixty bales of flax were consigned to the plaintiffs by the defendants’ railway to Newchurch, a small station where there was then no proper warehouse. The day after arrival the company sent the consignees a written notice stating that the goods had arrived, and requesting them to remove them as soon as possible, “as they remain here to your order, and are now held by the company, not as carriers, but as warehousemen, at owner’s sole risk, and subject to the usual warehouse charges.” Some of the bales were removed almost immediately, but the rest were left on the company’s hands for over two months, in consequence of some dispute between consignors and consignees. The company, not having any accommodation to store this large quantity of flax indoors, merely stacked it on the bare ground and covered it with tarpaulins. These tarpaulins were

(*d*) See *Heugh v. L. & N. W. Ry. Co.* (1870), L. R. 5 Ex. 51, *ante*, p. 76.

(*e*) (1875), L. R. 10 Q. B. 256.

not sufficient to properly protect it, and the rain got through and completely spoiled the flax. The consignees accordingly sued the company for damages for their loss. It was admitted by the company that they had not taken reasonable care of the goods, but they contended that they were not bound to do so, as their contract as carriers had come to an end, and they only held "at owner's sole risk" according to their notice. The Court, however, held that the company were liable; they had agreed to hold as warehousemen, and the words "at owner's sole risk" merely meant, in this case, that the company no longer held the goods as insurers. Blackburn, J., said: "The goods are carried at the risk of the carrier to the end of the journey, and when they arrive at the station to which they were forwarded, the carrier has then complied with his duty when he has given notice to the consignee of their arrival. And after this notice, and the consignee does not fetch the goods away, and becomes in default, then I think the carrier ceases to incur any liability as carrier, but is subject to the ordinary liability of bailee. I think, in this case, the railway in holding these goods could have charged warehouse rent, and that being so, I think there can be no doubt that *primâ facie* there was a liability in them as bailees for reward. The liability of an ordinary bailee is to take ordinary and reasonable care. And if the defendants in this case are under that liability, there is ample evidence that they did not do that. What we have to consider is, whether the defendants can have the benefit of receiving warehouse rent without any liability whatever, for that is what their argument came to: 'We are to be paid warehouse rent, and keep them as warehousemen, but we are not to be bound to take any care of them at all.' I do not think that the words 'at owner's sole risk,' applied to such a case as this, mean that the company are to hold the goods, not as common carriers, but as warehousemen, and subject to warehouse charges, but that none of the liability of warehousemen is to be attached. I think that the words

of that note mean to point out that they would hold them as warehousemen, and therefore they would be bound to take care of them: and at the owner's risk so far as this, that they did not hold as carriers, with a liability as absolute insurers." It will be noticed that in this case the company by their notice which was assented to by the consignees, contracted to hold the goods as warehousemen. They had, however, no proper accommodation for storing the goods, though they might have protected them much better than they did. It must not be assumed from this decision that the company were bound to take any responsibility at all for the goods when they had no proper facilities for storage.

It is of course, in some cases, of great importance to be able to say the exact time at which a railway company cease to hold goods as carriers and become responsible as warehousemen. There is a vagueness about a "reasonable time" which is not satisfactory. Therefore, when a consignment note is signed by a consignor the following conditions are usually endorsed thereon:—

6.—The transit shall (unless otherwise determined) be deemed to be at an end (a) in the case of goods to be carted by the Company when they are tendered at the place of delivery as defined in Condition 4 or (b) in the case of goods not to be carted by the Company or to be retained by the Company awaiting order at the expiration of 24 hours after notice of arrival is delivered to the consignee or at his address or should be so delivered in due course of post or where the address of the consignee is not known at the expiration of 24 hours after the arrival of the goods at the place to which they are consigned or (c) in the case of goods consigned to a destination beyond the limits of the Company's delivery when they have been transferred to another carrier in the usual course for conveyance or delivery in which last-mentioned case the Company shall cease to be liable for any subsequent loss damage misconveyance misdelivery delay or detention arising from any cause whatsoever.

7.—After the termination of the transit (as defined in Condition 6 (a) and (b) the Company will hold the goods as warehousemen subject to the usual charges.

The transit is thus defined by agreement between the parties; and the company's right to charge for storing is also a matter of agreement.

As has been said in an earlier chapter, no carrier is bound to accept goods for carriage unless the person wishing to send the goods is ready to pay the carrier's reasonable and proper charges at the time of delivery to the carrier. It is, however, extremely common for railway companies to carry goods without being prepaid (f). When goods are sold and sent by railway by the seller to the buyer, probably in the greater number of cases the carriage is paid by the buyer on delivery; or perhaps, in the case of large customers, there may be an arrangement with the company to pay periodically. It is, of course, necessary in some cases for companies to take steps to enforce payment of their charges where goods have been carried without prepayment and default is made by the person who should pay. It is now proposed to shortly discuss what those steps should be.

Every carrier has one very important security for the payment of his charges, that is, his right to retain possession of the goods until he is paid. This right is called in law a "lien," and, like other carriers, a railway company possesses this carrier's lien. This lien is merely a passive right to retain the goods, to refuse to give them up till the money is received. The common carrier has this right as against the owner of the goods even where the goods were delivered to the carrier by a thief, or other person having no right to deal with them; for the carrier is bound to accept goods offered him for transport (g). The company have no right to sell the goods, however long they may be left upon their hands, nor to do anything with the goods other than merely to retain them. The company are bound to take proper care of goods which they retain under this right, and should keep them for a reasonable time at a place reasonably convenient for the consignor to obtain possession of them if he is prepared to pay the carriage. The company's duty to take proper

(f) Under war conditions, the companies would only accept certain classes of goods on prepayment.

(g) *The Exeter Carriers' Case* cited in *Yorke v. Grenaugh* (1703), 2 Ld. Raym. 866.

care of the goods may make it necessary for them to incur expense in preserving the goods (*e.g.*, in feeding an animal retained); therefore they are entitled to recover such expense from the owner, but the lien does not extend to charges for preserving the goods (*h*). The company have no right to charge for warehousing the goods while they choose to detain them, as they detain them, not for the owner, but for their own benefit (*i*). A consignee has no right to remove goods or take possession of them against the will of the company, until the carriage has been paid.

As a rule, the carrier's lien only gives the carrier a right to retain a consignment of goods as security for the charges in respect of that particular consignment. The carrier has no right to retain goods to enforce charges in respect of the carriage of other goods. That is to say, the carrier's lien is a particular lien, and the carrier has no general lien to retain goods in respect of an account due to him by the owner. If, therefore, a consignee is indebted to a railway company for the carriage of goods, and another parcel of goods is sent to him, the company cannot retain this parcel for the money due in respect of the other goods; and if the consignee is prepared to pay the carriage of such parcel, the company must deliver it, although the consignee remains in debt for the other goods. The rights of the owner of the goods and the company may, however, be varied in a great many ways; and a company may have a right of general lien by agreement which may either be an express agreement or one implied from the general course of dealing between the parties (*k*). In nearly all cases, where any special contract is made for the carriage of goods, there is a condition referring to lien. It usually runs thus:—

9.—All goods delivered to the Company will be received and held by them subject to a lien for money due to them for the carriage of

(*h*) See *G. N. Ry. Co. v. Swaffield* (1874), L. R. 9 Exch. 132, *post*, p. 113.

(*i*) *Somes v. British Empire Shipping Co.* (1860), 8 H. L. Cas. 338.

(*k*) *Aspinall v. Pickford* (1800), 3 Bos. & P. 44, n.

and other charges upon or expenses in connection with such goods (including charges for warehousing or keeping such goods for detention of trucks road vehicles or sheets or for siding rent during the exercise of such lien) and all goods delivered to the Company under this consignment note or otherwise will be received and held by them subject to a general lien for any moneys due to them from the owners of such goods upon any account and in case any such lien is not satisfied within a reasonable time from the date upon which the Company first gave notice to the owners of the goods of the exercise of the same the goods may be sold by the Company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses and charges.

As such a contract relates to matters arising after the transit of the goods is at an end, it is good if brought to the notice of the consignor, whether signed by him or not. Under this contract a railway company have no right to retain goods as security for a debt due to them from the consignee, as against the seller of the goods, seeking to exercise his right of stoppage *in transitu*. The word "owners" as used in the contract does not mean the persons who are in law the owners at the time, but it means the persons who are entitled to demand delivery of the goods by the company (*l*). The general condition gives a company not only a general lien, but a right of sale. Before selling, however, they must keep the goods for a reasonable time, and they will be liable to an action for damages if they sell too soon. But whether there is any such agreement or not, where a company refuse to deliver goods because the consignee refuses to pay, the goods should be kept at the station of destination for a reasonable time (*m*). This enables the consignee to communicate with the consignor, and possibly some arrangement to be made. It should also be noticed that where a company has by agreement a general lien, the lien only comes into existence when the goods have been carried to the station of destination. A company have no right to exercise their lien until the transit is complete; therefore they are not justified in detaining goods at the beginning

(*l*) *United States Steel Products Co. v. G. W. Ry. Co.*, [1916] 1 A. C. 189.

(*m*) *Crouch v. G. W. Ry. Co.* (1858), 27 L. J. Ex. 345.

of the transit and refusing to part with them till the general account is satisfied (n).

Where a company exercise their lien upon perishables, the ordinary conditions of a consignment note give them power to sell forthwith. But, with regard to such goods when left in the company's hands after transit from any cause, it is probably safe to sell them at once, whether the company have power to do so or not, as the only way of avoiding certain loss to the owner.

Where a company do not choose to exercise their lien, and deliver the goods to the consignee without payment of carriage, the only means then of recovering what is due is, as a rule, an action at law. It sometimes becomes somewhat difficult to decide who should be the defendant in such an action. As a general rule, there is no contract except with the consignor, and therefore it is usually safe for the company to sue him. The consignor, however, may merely be acting as the agent of the consignee in forwarding the goods, and in such a case the consignee may be sued. This is so in the ordinary case of goods being sent by the seller to the buyer, where, by the agreement for sale, the goods become the property of the buyer, and are sent to him by the seller by his instructions. If the company have notice that the consignor is acting as the agent of the consignee, they can only sue the consignee. But if they know nothing of the relationship between the parties, and have not agreed to look to the consignee alone for payment, they can always sue the consignor as being the only person with whom they had any direct contract.

In *Great Western Ry. Co. v. Bagge* (o) it appeared that the defendant had delivered a boiler trolley to the plaintiff company to be carried from Bristol to Maidstone. In the consignment note, under the heading "Who pays carriage," was written the word "consignee." The consignee, however, refused to pay, on the ground that

(n) *Wiltshire Iron Co. v. G. W. Ry. Co.* (1871), L. R. 6 Q. B. 776.

(o) (1885), 15 Q. B. D. 625.

the defendant had agreed to pay. The company, therefore, brought this action against the defendant as the consignor and the person with whom they had made the contract of carriage. The defendant admitted that he had agreed with the consignee to pay the carriage, but contended that the statement in the consignment note constituted an agreement on the part of the company to look to the consignee for payment, and, therefore, the consignee alone could be sued. The Court, however, decided that the defendant was liable, as the contract was with him alone ; and the fact that he stated in the consignment note that the consignee would pay only amounted to an assertion—false in this case—that the consignee had undertaken to pay. Such statement did not bind the company, and if the consignee refused to pay, the consignor was bound to pay.

It is, of course, very difficult for a company to know exactly the relationship between the consignor and consignee. Therefore, to avoid any question which may possibly be raised as to the liability of the consignor, it is usual to have a condition endorsed on the consignment note as follows :—

“ The sender will be liable for all charges for carriage or otherwise including the detention of trucks road vehicles or sheets before during or after transit without prejudice to the Company's rights against the Consignee or other person.”

If the consignee refuses to pay the company may exercise their lien, and, while retaining the goods as security, may sue the proper person to recover the money due. If they get judgment for the amount due, they must hand over the goods when the judgment is satisfied ; they need not do so sooner.

CHAPTER VII.

THE CARRIAGE OF ANIMALS.

BEFORE the days of railways there were probably no carriers by land of the larger animals. A common carrier of such animals seems to have been unknown. And in the earlier days of railways, as the companies did not profess to be common carriers of animals, they could not be compelled to carry them, and, as a rule, only consented to carry them on being relieved of almost all responsibility for their safety. We have seen in the case of *Carr v. Lancashire and Yorkshire Ry. Co.* (a) an example of conditions on which horses were carried. The Railway and Canal Traffic Act, 1854, however, obliges every railway company, according to their powers, to afford all reasonable facilities for the receiving and forwarding and delivering of traffic; and traffic is expressly defined to include animals. Therefore a company can no longer refuse to carry animals, or refuse to carry them except upon their own terms; for, by sect. 7 of the Act, no conditions relieving the company of liability for neglect and default are binding on the consignor unless they are just and reasonable. There is nothing, however, which compels a railway company to be common carriers of animals; therefore they may refuse to carry except upon conditions relieving them of responsibility for loss of injury which is not caused by the neglect or default of the company or their servants. If, however, they do carry animals without making any conditions, they are subject to the ordinary liability of common carriers with regard to them (b). But even in this case the Act protects the company from liability

(a) *Ante*, p. 31.

(b) See *M^r Manus v. L. & Y. Ry. Co.* (1859), 28 L. J. Ex. 353; *Kendall v. L. & S. W. Ry. Co.* (1872), L. R. 7 Ex. 373.

beyond a certain sum in the case of the most important classes of animals carried ; for it provides that no more than 50*l.* can be recovered for loss or injury to any horse, 15*l.* for any head of cattle of the ox species, or 2*l.* for any sheep or pig, unless the consignor at the time of delivering any such animal to the company declares it to be of higher value. If such declaration is made, then the company may charge a reasonable percentage on the declared value beyond the sums above mentioned by way of insurance and compensation for the increased risk and care required in carrying the animal. This percentage cannot, however, be demanded unless the scale of such charges is notified by notices affixed in a conspicuous way in the company's receiving offices. The declaration of value must be in the nature of a distinct intimation to the company that they are to be held responsible for such sum. If no such declaration is made, the company cannot demand a percentage beyond the usual charge where they have obtained knowledge of the value of an animal from some other source than such declaration (c). Where a higher value is declared and the percentage paid, no greater sum can be recovered than that declared ; but the company are not bound by the declaration, and, in case of loss or injury, the owner must prove the value of the animal lost or the amount of the injury sustained. The limitation of liability protects the company in all cases where no declaration is made and where there is no special contract.

This percentage is not a charge for carriage ; by the express words of the Act it is "compensation for the increased risk and care." Therefore the money paid for carriage and insurance may, together, far exceed the maximum rate allowed for the carriage of any particular animal. Large sums by way of insurance are often paid for very valuable animals, such as racehorses or prize bulls, and it is obviously impossible that any maximum could reasonably be imposed. The Courts seem to re-

(c) *Robinson v. L. & S. W. Ry. Co.* (1865), 34 L. J. C. P. 234.

gard with disfavour any attempt by a company to insure any class of traffic unless they are given power by statute to do so. It is only in the case of horses, cattle, sheep, and pigs that companies are given power to demand a sum by way of insurance of animals. With regard to other animals, they are bound to carry them on reasonable terms; but as they expressly notify that they are not common carriers of animals, they are probably justified in refusing to carry any animals unless they are relieved of liability, except upon proof of negligence. And in case of animals of great value (*e.g.* dogs) it has now been settled that on proof that their carriage involves peculiar risk, and that otherwise such a condition is reasonable, a company is justified in refusing to carry such animals with liability for negligence except upon terms that they shall not be responsible for more than a certain sum unless a higher value is declared, and a reasonable percentage paid upon the excess of that sum above the sum up to which the company are willing to be responsible (*d*). Subject to this, it seems that if a maximum rate is fixed for any animals other than horses, cattle, sheep, or pigs, such animals must be carried for a sum not exceeding that rate at the company's risk, so far as negligence is concerned, though the company need not carry as insurers (*e*).

It is doubtful whether railway companies can be required to carry wild beasts; but if they do carry such animals they may charge such reasonable sum as they think fit, and may probably insist on very strict conditions (*f*).

Section 7 of the Act of 1854 limits the liability of companies in respect of the classes of animals mentioned in case of neglect or default in "the receiving, forwarding, or delivering" of such animals. Hence, if an animal is injured by negligence when brought on to the company's premises for the purpose of being carried, before any declar-

(*d*) *Williams v. Midland Ry. Co.*, [1908] 1 K. B. 252. See *ante*, p. 42.

(*e*) *Peek v. N. Staff. Ry. Co.* (1863), 10 H. L. 473, at p. 561.

(*f*) See Rates and Charges Order Confirmation Acts, Part IV.

ation or contract is made, the company are only liable up to the limit, because the negligence is negligence in the receiving. Thus, in *Hodgman v. West Midland Ry. Co.* (g) the plaintiff sent a valuable racehorse, in charge of a groom, to a station of the defendant company, to be forwarded to London. The groom, on bringing the horse on to the company's premises, was told by a servant of the company to lead the horse through the yard by a certain way. A pile of sharp-edged iron girders were lying so that the horse had to be led close to them. Another horse took fright at something in the yard and backed on to the first horse, causing him to back on to the girders. In consequence, he was so injured that he had to be destroyed. No ticket had been taken or declaration of value made, as the groom, apparently, had not yet had time to do so when the accident happened. The plaintiff sued the company for the value of the horse, and got a verdict for 1,000*l.* On appeal, however, it was held that the company were only liable for 50*l.*, as they were entitled to the protection of the Act, the negligence which caused the injury being negligence in the "receiving" of the horse.

As in the case of other goods, railway companies offer to carry animals at reduced rates in consideration of being relieved of liability for negligence, and on other terms. Horses of small value are often carried on such terms in cattle trucks, and when so carried consignors are required to sign the following note :—

"Declaration to be signed when Horses, Ponies, Mules, or Asses are conveyed in Cattle Trucks by Goods Train at a Reduced Rate.

"I hereby declare that the value of the above ——— does not exceed 10*l.* per head, and in consideration of the reduced rate charged for their conveyance, I undertake to relieve the company, and all other companies or persons over whose lines they may pass or in whose possession they may be during any portion of the transit, from all liability for loss, damage, misdelivery, delay or detention, except upon proof that such loss, damage, misdelivery, delay or detention arose from wilful misconduct on the part of the company's servants.

"Signature ———."

In *M'Cance v. London and North Western Ry. Co.* (h) the plaintiff sent certain horses under a similar signed contract. Some of the horses were injured in circumstances which gave the plaintiff, as he alleged, a right of action. It was held that he was bound by his declaration that the horses were not worth more than 10*l.* a head, and that he could not give evidence that they were of any higher value.

With regard to ordinary cattle, sheep and pigs, carried at owner's risk, the following is a form of consignment note in use :—

" The X. Railway Company hereby give notice that they are not common carriers of animals, and that they have two rates for the carriage of cattle, sheep and pigs in certain cases, either of which can be adopted by the sender; one, the ordinary rate, when the company accept the liability attaching to carriers of animals; the other a reduced rate, when the sender agrees to relieve the company and all other companies over whose lines the animals may pass or in whose possession they may be during any portion of the transit from all liability for loss, injury, misdelivery, delay or detention except upon proof that such loss, injury, misdelivery, delay or detention arose from wilful misconduct on the part of the servants of the company or of the other companies concerned in the transit. Whichever rate is adopted, the provisions of sect. 7 of the Railway and Canal Traffic Act, 1854, limiting the damages, shall apply in all cases where liability is proved.

" To X. Railway Co.

" ——— Station ——— 190 .

" Receive and forward the under-mentioned animals at the reduced rate, below the ordinary rate, subject to the conditions applying thereto set out in the above notice, and also subject to the conditions on the back of this note, by all of which I agree to be bound.

" This agreement shall be deemed to be separately made with each company where there are more than one concerned in the transit."

" Signature of Sender or Representative——."

Where animals are sent at the company's risk, it is usual for the consignment note to contain the condition that—

" The company will not be liable for the loss of or for any injury done to live stock in the receiving, forwarding or delivering thereof,

except upon proof that such loss or injury was caused by neglect or default on the part of the company or their servants.”

Where injury is caused and there is any such condition in force, the owner who alleges that the injury was caused by negligence must prove negligence, and in the absence of such proof cannot succeed in an action against the company. Thus, in *Smith v. Midland Ry. Co.* (i), the plaintiff had sent eight cows by the defendant company's railway from Derby to Bedford. The consignment note contained a condition that the company would not be responsible for any loss or injury caused to any animal, if such damage were occasioned by suffocation or being trampled on, or by the kicking, plunging or unruliness of the same or of any other animal forwarded therewith; nor for any injury or damage occurring to the same whilst travelling or in loading or unloading, unless such damage or injury should be caused by negligence on the part of the company or their servants. The cows were safely put into a truck at Derby, but on arrival of the train at Bedford one had a broken leg, another was lame, and two others were bruised and had suffered other slight injuries. The plaintiff accordingly sued the company in the County Court. He was unable, however, to prove any definite negligence, and could only say that, from his experience and from the nature of the injuries, they were caused by negligent shunting and violent jerking of the train. The plaintiff succeeded in the County Court. On appeal, however, the High Court held that judgment must be for the company, for the injuries were quite as consistent with the cattle having become restive and one of them having fallen down and got her leg broken, as with the unreasonable jolting of the train, and it was for the plaintiff to give proof of the negligence he alleged.

But the circumstances of a case may be such as to raise a clear inference that the injuries to an animal were caused by negligence; and if it can be proved that there

(i) (1887), 57 L. T. 813; see *ante*, p. 67. See also *Russell v. L. & S. W. Ry. Co.* (1908), 24 T. L. R. 548.

was anything improper in the mode by which the animal was carried, and that the animal was found injured in a waggon, there is sufficient evidence of negligence on the part of the company, unless they can prove that the improper mode of carriage did not in fact cause the injury. Thus in *Pickering v. North Eastern Ry. Co.* (k) a horse carried on this condition was put into a box which was attached to a mineral train. The horse was found at the end of the journey to have received serious injuries, and the owner sued the company for damages. It was proved at the trial that the train had been subjected to a great deal of violent shunting, and that the trucks of which it was for the most part composed were not fitted with proper couplings. In these circumstances the Court held that there was sufficient evidence of negligence on the part of the company, and the plaintiff succeeded in his action.

It is obvious that animals are traffic which entail great risk on the part of railway companies—far more than with regard to almost any other class of goods. They are alive and have wills of their own; they move of themselves and are liable to fright and panic; therefore the amount of care they require in loading and unloading and during the actual transit is very great. Hence the companies, in dealing with horses, cattle, sheep, pigs, &c., are always careful to protect themselves as far as possible against loss or injury not due to any negligence. A condition that a company shall not be liable for injury caused to an animal by kicking or plunging from fright and restiveness may be a reasonable condition, but this only applies to fright and restiveness caused by the ordinary incidents of transit. If the fright be caused by negligence on the part of the company, this condition will not protect them (l).

When a company are not protected by any such condition, and are sued for injury done to animals, the defence

(k) (1887), 4 T. L. R. 7.

(l) *Gill v. Manchester, Sheffield and Lincolnshire Ry. Co.* (1873), L. R. 8 Q. B. 186.

is sometimes open to them that the injury was occasioned by the animals' own inherent vice. We have seen examples of this defence in the cases of *Blower v. Great Western Ry. Co.* (m) and *Kendall v. London & South Western Ry. Co.* (n). The defence, however, cannot be expected to succeed very often; for the carrying company must provide against all ordinary cases of unruliness or fright. In order to take advantage of this defence, the company must show that the animal was injured through its own act, and also that the act was one so far out of the common that the company could not be expected to have foreseen it or to have taken steps to guard against it. Thus the vehicle in which the animal is carried must be reasonably strong. If a horse kicks and breaks the side of the horse-box in which he is being carried, and so injures himself, the company will probably find themselves obliged to pay damages, for the horse-box must be strong enough to resist all kicks that can be reasonably expected, and all ordinary unruliness of horses. If, however, it could be proved that a horse injured in this way was vicious and unruly in an abnormal degree, the company might escape liability on proof that the vehicle was strong enough to satisfy all ordinary reasonable requirements. It is not necessary, however, to go so far as to prove that an injured animal was by nature extraordinarily vicious; it is sufficient if the company can show that the animal was injured by its own struggles due to fright or temper, and that there was no negligence on the part of the company which contributed to the injury (o).

In *Blower v. Great Western Ry. Co.* (p) it was said to be the duty of a railway company to provide vehicles for the carriage of cattle sufficient to secure the cattle from injury from the ordinary incidents of a railway journey, including fright occasioned by their novel position and

(m) *Ante*, p. 8.

(n) *Ante*, p. 9.

(o) See *Kendall v. L. & S. W. Ry. Co.* (1872), L. R. 7 Ex. 373; *ante*, p. 9.

(p) (1872), L. R. 7 C. P. 655; *ante*, p. 8.

passing objects. It is obviously of the greatest importance for companies to see that all horse-boxes and cattle-trucks are in a thoroughly sound condition, and strong enough to stand all ordinary strain and all such violence as should reasonably be expected from the animals carried. In *M. Manus v. Lancashire and Yorkshire Ry. Co.* (q) the plaintiff sent three horses by the defendants' railway in a truck. He signed a ticket, on which was a condition that the ticket was issued "subject to the owners undertaking all risks of conveyance, loading and unloading whatsoever, as the company will not be responsible for any injury or damage (howsoever caused) occurring to live-stock of any description travelling upon" their railway. On the journey a hole was knocked in the bottom of the truck, and a horse got his leg through and was injured. The action was brought for damages in respect of this injury. The Court held that the condition on the ticket was unreasonable, and therefore void, and that the company were liable for negligence in not providing a sufficiently strong truck. Williams, J., said: "The sufficiency or insufficiency of the vehicles by which the company are to carry on their business is a matter, generally speaking, which they and they alone have, or ought to have, the means of fully ascertaining. And it would not only be unreasonable, but mischievous, if they were to be allowed to absolve themselves from the consequences of neglecting to perform properly that which seems naturally to belong to them as a duty."

If, however, a company carry cattle at owner's risk, being relieved from liability for negligence by a signed contract in consideration of the cattle being carried at a lower rate, no doubt they can even contract themselves out of the duty to supply proper and sufficient vehicles. Sometimes from motives of economy the owner of cattle requests the company to carry an unusual number of cattle in a truck. In this case the company are justified in insisting upon a condition that they shall not be responsible

(q) (1859), 28 L. J. Ex. 353.

for loss due to overcrowding, and in the circumstances such a condition is reasonable (r).

A company are also bound to provide fit and proper places and appliances for the loading and unloading of animals, and to guard against injury to them by escaping on to the line or otherwise in the course of loading or unloading. In *Rooth v. North Eastern Ry. Co.* (s) the plaintiff's cattle were being unloaded from two trucks at a siding which was wholly unprotected from the line. Servants, both of the company and of the plaintiff, were engaged in the operation. While unloading the second truck, the cattle which had been in the first truck strayed on to the line and some of them were killed by a passing train. In an action for damages for the loss of these beasts the company set up, in defence, a consignment note, signed by the plaintiff, which contained a condition that the owner undertook all risks, including risks from "defect or imperfections of the stations, platforms, or other places of loading or unloading." This condition was held to be unreasonable, there being no fair consideration to the plaintiff for agreeing to it, and the plaintiff succeeded in his action. The Court held that it is the duty of a company to take care of their stations, and to see that those places over which cattle have to go on their way to or from the company's vehicles are in a condition to ensure safety.

Questions of difficulty often arise, as in the case last referred to, as to when delivery of cattle is complete. The unloading is often carried out by the servants of the consignee and of the company working together, and, of course, the company are not responsible for any negligence of the former. It is, however, usually a pure question of fact for a jury, whether or not the delivery was complete, and whose negligence caused damage.

But, as a rule, as long as cattle are being unloaded

(r) *Sheridan v. Midland Great Western Ry. Co.* (1888), 24 L. R. Ir. 146.

(s) (1867), L. R. 2 Ex. 173.

and still on the company's premises, and still being dealt with by the company's servants, a large measure of responsibility must continue to rest on the company.

Where the owner of an animal delivered to a company for carriage himself provides means for securing the animal, the company cannot be convicted of negligence if the animal escapes because of such means being insufficient (*t*). But if the company's servants can see that such means of securing the animal are insufficient at the time when they receive the animal, probably the company will not in such circumstances be able to avoid responsibility (*u*). Wherever the circumstances were such as to show that the company had admitted the sufficiency of the means of control and agreed to carry the animal in the condition delivered, they would be liable for damages if the animal escaped and were injured through such means being defective or insufficient.

In the case of animals, delay is a much more serious thing than in the case of most kinds of inanimate goods. Delay may cause serious deterioration, or even death, from want of food. Therefore, it may sometimes be the duty of a company, in case of delay, to supply animals with food or water at their own expense. In *Allday v. Great Western Ry. Co.* (*x*) cattle were sent by the defendant company under a contract, which the Court held to be void as unreasonable. The company therefore lost all protection from the contract. The cattle were carried beyond their destination by the negligence of the company, and great delay was caused in delivery. The result was, that as the cattle were given no food or water they were depreciated in value from loss of condition. It was held that the company were liable to compensate the plaintiff for his loss through this depreciation.

A company will clearly be liable for loss caused by want of food, wherever there is a duty upon the company to

(*t*) *Richardson v. N. E. Ry. Co.* (1872), L. R. 7 C. P. 75.

(*u*) See *Stuart v. Crawley* (1818), 2 Stark. 323.

(*x*) (1864), 11 L. T. 267.

supply food, and that duty is neglected. Thus, in *Curran v. Midland Great Western Ry. Co. of Ireland* (y), the plaintiff had sent many consignments of pigs by the defendant company. It was the usual custom for the company to feed the plaintiff's pigs, on transit, when necessary, without being requested so to do, and to charge the plaintiff for the food. A particular consignment of pigs were, however, not fed by the company as usual, and were in consequence depreciated in value. It was held that the company were liable in damages.

There is, however, a statutory obligation upon railway companies to supply food and water in certain circumstances for animals carried. By sect. 23 of the Diseases of Animals Act, 1894, it is provided that every company shall provide water and food, to the satisfaction of the Board of Agriculture, at such stations as the Board shall direct, for the use of animals carried or about to be carried on the railway. This water and food must be supplied by the company to any such animal on the request of the consignor or of any person in charge of the animal. As regards water, if a request is not made so that any animal remains for twenty-four consecutive hours without water, the consignor and the person in charge are each guilty of an offence, and liable to a fine of 20*l.*, or of 5*l.* a head if the offence is committed with respect to more than four animals, and to imprisonment for a second conviction within twelve months. It lies on the person charged to prove a request and the time within which the animal had a supply of water. The Board also has power to shorten the period of twenty-four hours to any period not less than twelve hours, either generally or in respect to any particular kind of animal. The company who supply food or water under this provision are entitled to make a reasonable charge therefor, the amount of such charges being subject to approval by the Board. On a long journey the circumstances may be such that a request to supply food or water will be implied, and the company

(y) [1896] 2 Ir. R. 183.

will be entitled to their charges, although they have supplied the food or water without any express request (z). These charges constitute a debt to the company from both the consignor and the consignee, and may be recovered from either of them in a court of justice. The company also have a lien for these charges upon any animal to which the food or water has been supplied, and also upon any other animal consigned by the company by or to the same consignor or consignee.

Under the same Act the Board of Agriculture has power to make (and has made) orders regulating the transport of animals so as to protect them from unnecessary suffering, to secure that they have a proper supply of food and water, to ensure the proper cleansing and disinfecting of trucks and pens, and for many other purposes. The Board may also, as occasion requires, make orders prohibiting or regulating the movement of animals into, within, or out of a district in which cattle plague or other contagious disease is prevalent. Disobedience to such orders makes a company liable to a penalty.

Where animals are carried by railway, it is the duty of the consignee to provide for the reception of the animals at the end of the transit. If he does not fulfil this duty, the company are not in general liable in damages for all the possible consequences; but they may be liable to a penalty if any regulation of the Board of Agriculture for the care of animals during detention is disregarded. If animals are not received by the consignee, however, the company must take reasonable care of them. They are not justified in turning them into the road or letting them starve; and they may recover from the owner any expenses properly incurred in taking such care of them. In *Great Northern Ry. Co. v. Swaffield* (a) the defendant had sent a horse directed to himself at a country station on the plaintiff company's railway. The horse arrived safely at the station at 10 o'clock p.m., but there was no

(z) *G. S. & W. Ry. Co. v. Hourigan* (1910), 44 I. L. T. 86.

(a) (1874), L. R. 9 Ex. 132.

one to meet it, and the station-master did not know where the defendant lived. There was no accommodation for the horse at the station, and so the station-master sent it to the nearest livery stable. Soon afterwards the defendant's servant arrived, and asked for the horse. He was referred to the livery stable-keeper, who demanded a small sum for the short time the horse had been in his care. The servant refused to pay this, and the livery stable-keeper refused to let the horse go until he was paid. A long dispute then ensued between the company and the defendant, during which the horse was left at livery till a sum of 17*l.* was due for his keep. All this time the owner refused to fetch the horse, demanding that it should be sent to his house without payment. At last the company paid the amount, sent the horse to the defendant, and sued him for what they had paid. It was held that the company were entitled to succeed. The horse was not directed to any particular place; there was no one to receive it on arrival; there was no accommodation at the station; therefore it was the duty of the company to take the only course that was reasonably open to them to secure the safety of the horse, that is, to send it to a stable. This they had done, and they were entitled to recover the expenses incurred.

Therefore, if animals are left on a company's hands at the end of the transit, it is their duty to act reasonably according to the circumstances of the case in providing for the safety of the animals. Failure to perform this duty is negligence, and for this negligence the company are responsible, unless protected by some contract. On the other hand, they are entitled to recover any expenses reasonably incurred in carrying out this duty.

Further, as we have already seen, if the delivery of animals is delayed by the fault of the company, the company may have to pay damages if the condition of the animals is deteriorated by want of food or water. Therefore, in such case, and to avoid this liability, a company should supply animals with all that is necessary to maintain their condition.

CHAPTER VIII.

PASSENGERS' LUGGAGE.

FROM the earliest days of public coaches it seems to have been the custom for carriers of passengers to carry a certain amount of personal luggage for their passengers without additional charge. They do not, however, carry this luggage gratuitously, for the fare paid by the person carried is understood to include remuneration to the carrier for the carriage of a reasonable quantity of such goods as a person travelling usually takes with him for his personal use and comfort. By their private Acts almost all railway companies are bound to carry, free of extra charge, the ordinary personal luggage of their passengers up to a certain weight. With regard to such luggage, a railway company is, as a rule, subject to all the heavy responsibilities of a common carrier. They are therefore insurers of the safety of such luggage. But, on the other hand, they are entitled to all the protection given to carriers by the Carriers Act, 1830 (*a*). As has been seen, every railway company is obliged, by sect. 2 of the Railway and Canal Traffic Act, 1854, to afford reasonable facilities for receiving, forwarding, and delivering traffic upon their railway. "Traffic" is defined in sect. 1 to include, not only passengers, but also their luggage. Then sect. 7 makes the company liable for loss or injury to any "articles, goods, or things" by negligence, unless their liability is limited by a contract signed by the person delivering the goods to the company, which contract, however, is only binding when its conditions are just or reasonable. Passengers' luggage is included in the words "articles, goods, or things" (*b*). Therefore

(*a*) *Casswell v. Cheshire Lines Committee*, [1907] 2 K. B. 499.

(*b*) See *Cohen v. S. E. Ry. Co.* (1877), 2 Ex. D. 253.

the provisions of sect. 7 apply to passengers' luggage as well as to other kinds of goods (c).

A private Act of each company obliges the company to carry free a certain weight of the "ordinary" or "personal" luggage of their passengers. The weight which the company may be so required to carry varies with the class of carriage by which the passenger is travelling. Most companies have voluntarily increased the amount of luggage which they carry free to a considerably greater weight than their Acts oblige them to carry. The quantity appears to vary to some extent on different railways, but most of the great companies allow first class passengers to take 150 lbs., and third class 100 lbs.

The definition of passengers' luggage has given the Courts much trouble. It is of the greatest importance to companies to have some trustworthy rules as to what is and what is not passengers' luggage, for in the first place they are not obliged to carry any other goods without extra charge; and in the second place, if goods are carried which appear to be passengers' luggage, but which in fact are not passengers' luggage, the carrying company in the case of loss or injury may avoid all liability on the ground that they never contracted to carry such goods. Also, as has already been stated, goods which properly come under the description of "passengers' luggage" are carried as insurers, with all the liabilities of the common carrier.

Ordinary or personal luggage alone must be carried free. This includes what a passenger takes with him for his personal use and convenience, according to the habits of the class of life to which he belongs. Thus, his clothing, toilet requisites, and such like would clearly come under the description, whilst, on the other hand, a commercial traveller's case of samples would just as clearly not be personal luggage. As usual in such cases, the difficulty is to draw the line. The questions generally

(c) *Wilkinson v. Lancashire and Yorkshire Ry. Co.*, [1907] 2 K. B. 222; see *post*, p. 122.

arise either where a company refuse to carry goods without extra payment on the ground that they are not passengers' luggage, or where goods are lost or destroyed, and the company resist a claim for damages on the ground that they had not contracted to carry goods which were not passengers' luggage.

In *Hudston v. Midland Ry. Co.* (d) the plaintiff took a first-class return ticket from Nottingham to London, and travelled to London, taking no luggage with him. In London he purchased a child's rocking-horse, which weighed 78 lbs. and was 44 in. in length. This article the company refused to allow him to take back to Nottingham without extra payment, as it was not passengers' luggage. The plaintiff paid 2s. 6d. for its carriage under protest, and sued the company to recover back that amount. The company were bound to carry free "personal luggage only (not being merchandise or other articles carried for hire or profit);" but the plaintiff contended that the rocking horse came under this description, as it was not merchandise in his hands, and was for the personal use of his children, and was under the allowed weight. The Court decided in favour of the company, as the rocking-horse was not personal luggage. The Court remarked how extremely difficult it is to frame a definition of what is included within those terms, and stated that personal luggage means those things which are usually or ordinarily carried by passengers as their luggage according to the usual habits of persons travelling. A 78 lb. rocking-horse did not come within the definition.

In *Macrow v. Great Western Ry. Co.* (e) the plaintiff, who had just arrived at Liverpool from Canada, was a passenger 'by the defendants' railway from Liverpool to London. He took with him as luggage, amongst other articles, a trunk which contained six pairs of sheets, six pairs of blankets, and six quilts, intended for the use of his household as soon as he had secured a home in London. This trunk was lost on the journey, and the plaintiff sued

(d) (1869), L. R. 4 Q. B. 366.

(e) (1871), L. R. 6 Q. B. 612.

the company for damages. The company's Act allows every passenger to take with him "his ordinary luggage," not exceeding a certain weight, without extra charge. The company therefore defended the action on the grounds that the lost property was not "ordinary luggage," that their contract was to carry only the passenger and his ordinary luggage, and that when they accepted the trunk they accepted it on the understanding that it was ordinary luggage, and without notice as to its real character. On appeal, it was held that the company were not liable for the loss of these things, on the grounds put forward by them. Cockburn, C. J., in delivering the judgment of the Court of Queen's Bench, said: "The conveyance of the personal luggage of the passenger being obviously for his convenience, and therefore accessory, as it were, to his conveyance, it may be thought that the liability of the carrier, in respect of the safe conveyance of passengers' luggage, should have been co-extensive only with the liability in respect of the safety of the passenger. The law, however, is now too firmly settled to admit of being shaken: that the liability of common carriers, in respect of articles carried as passengers' luggage, is that of carriers of goods as distinguished from that of carriers of passengers. On the other hand, the obligation of a railway company, or other carrier of passengers, to carry the luggage of a passenger, being limited to personal luggage, it follows that it is only in respect of what properly falls under the denomination of personal luggage, or has been accepted by the carrier as such, that the liability to carry safely, irrespectively of negligence, attaches The difficulty in the present case, as it has been in many others, is to determine what properly comes under the description of ordinary personal luggage. . . . We hold the true rule to be that whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or the ultimate purpose of the journey, must be considered as

personal luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun-case or the fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of an analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journey. On the other hand, the term 'ordinary luggage' being thus confined to that which is personal to the passenger, and carried for his use or convenience, it follows that what is carried for the purposes of business, such as merchandise or the like, or for larger or ulterior purposes, such as articles of furniture or household goods, would not come within the description of ordinary luggage, unless accepted as such by the carrier. The articles as to which the question in the present case arises consisted of bedding. Now, though we are far from saying that a pair of sheets, or the like, taken by a passenger for his own use on a journey, might not fairly be considered as personal luggage, it appears to us that a quantity of articles of this description, intended, not for the use of the traveller on the journey, but for the use of his household when permanently settled, cannot be held to be so."

It is to be noticed that in this judgment it was suggested that a thing would come under the description of personal luggage if it was being taken for the immediate personal use of the passenger at the end of the journey, as the gun-case of a person going by train to a place where he intended to shoot. This test, however, is by no means reliable, and can easily be pressed too far. The point has been raised in the case of a bicycle. A bicycle taken by train by a passenger, who hopes to mount and ride it as soon as he alights from the train, would clearly be carried for the personal use of the traveller, and with reference to the purpose of his journey; but it was decided in *Britten v. Great Northern Ry. Co.* (f) that a bicycle is not "ordinary luggage," and that a passenger cannot

(f) [1899] 1 Q. B. 243.

require a railway company to carry it without extra charge. In that case the plaintiff travelled from King's Cross to Finchley in order to enjoy a bicycle ride in the country. He claimed to be allowed to take his bicycle with him free of any charge beyond what he had paid for his ticket as a passenger, on the ground that the bicycle was his personal luggage. The company refused to carry the bicycle unless he paid the sum of 6*d.* in addition to his fare as a passenger. He paid that sum under protest, and brought an action against the company to recover the 6*d.*, and for a declaration that he was entitled to require the company to carry the bicycle as personal luggage. In giving judgment in favour of the company, Channell, J., said:—"I think there are certain requirements which must exist in order that the thing may be ordinary luggage: first of all, that it must be for the passenger's personal use; and next, that it must be for use in connection with the journey, which, I understand, means that it must be something that is habitually taken by the person when he is travelling, for use, not merely during the actual journey, but for use during the time he is away from home. He is not to take his furniture, and such like articles of permanent use, under the category of luggage. So far that excludes things which are not taken for those purposes, but it does not seem to me at all necessary to say that it includes everything which is taken for personal use. It seems to me that, overriding it all, in the word 'luggage' there is involved the idea of a package or something of that sort, and it seems to me that an article which is taken, as it were, loose, as a bicycle is taken, is subject to rather different considerations. . . . It seems to me there is, in addition to the requirement that they are for some personal use, the requirement that they must be of the kind of things that are usually denominated as luggage. To my mind, it conveys the idea that they are carried about in a box or a bag or something of that kind. That is the popular idea conveyed by the word 'luggage.' If a package of that kind is lost, and is

afterwards proved to have contained certain articles not for personal use, then those things may be excluded from the articles which the company were bound to carry, and for which they were responsible. . . . A bicycle—however common it may be among people to carry bicycles about with them—cannot be said to be carried as luggage in the sense of ordinary personal luggage.” The judge also pointed out the exceeding difficulty of defining what is luggage, and how far easier it is to say what is *not* luggage.

Following the decision in *Macrow v. Great Western Ry. Co.* it has been held that a revolver, ear defenders, a pair of binocular glasses and a flash lamp carried in the suit case of an Army officer during the war were personal luggage (*g*).

Documents carried in his portmanteau by a solicitor travelling by railway to attend a court have been held not to be personal or ordinary luggage (*h*), nor is an invalid chair (*i*), nor sketches carried in his portmanteau by an artist (*k*), nor theatrical clothing and properties taken as luggage by a comedian (*l*).

Again, goods which are being carried as merchandise for purposes of trade or business, and not for personal use, are not personal luggage (*m*). But if a railway company choose to accept as ordinary luggage things which they know do not come under that description, they are responsible for their safety; and, in the event of loss, cannot claim exemption from liability on the ground of the nature of the goods (*n*). Railway companies issue tickets to commercial travellers, theatrical companies and others on favourable terms, and allow them to take a certain quantity of their business effects free of charge by the trains in which they travel, as if such goods were personal luggage. The companies usually, however,

(*g*) *Jenkyns v. Southampton Steam Packet Co.*, [1919] 2 K. B. 135.

(*h*) *Phelps v. L. & N. W. Ry. Co.* (1865), 34 L. J. C. P. 259.

(*i*) *Cusack v. L. & N. W. Ry. Co.* (1891), 7 T. L. R. 452.

(*k*) *Mytton v. Midland Ry. Co.* (1859), 28 L. J. Ex. 385.

(*l*) *Gilbey v. G. N. Ry. Co.* (1920), 36 T. L. R. 562.

(*m*) *Belfast and Ballymena Ry. Co. v. Keys* (1861), 9 H. L. Cas. 556.

(*n*) See *Cahill v. L. & N. W. Ry. Co.* (1862), 31 L. J. C. P. 271.

attempt to limit their liability in respect of such traffic. In *Wilkinson v. Lancashire and Yorkshire Ry. Co.* (o) the plaintiffs were commercial travellers in the cigar trade. They took tickets by the defendants' railway and steamer from Huddersfield to Belfast, having with them, in the course of their business, a case containing samples of cigars. This case was carried by the company as if it were passenger's luggage. On arrival at Belfast, the plaintiffs were informed that the case had been dropped into the sea by the company's servants, and could not be delivered. They accordingly sued the company for the value of their lost property, and the company defended the action on the ground that by agreement with the plaintiffs they were relieved of all liability. It was proved that by a notice in the company's time-tables commercial travellers were allowed to take with them free of charge a certain quantity of luggage on condition that the company were relieved from all liability for loss, damage, misdelivery, or delay. The Court of Appeal, however, held that as the plaintiffs had signed no contract, sect. 7 of the Railway and Canal Traffic Act, 1854, applied; the condition therefore was null and void, and the company were liable. Companies, therefore, although they are not bound to carry the samples of commercial travellers and other such goods by passenger train, cannot avoid liability for negligence in carrying such goods except by a signed contract; and notices in their time-tables so limiting their liability are of no effect. By sufficient notice, however, they may protect themselves from liability, except on proof of negligence, and so throw the burden of proof of negligence on the owner of the goods.

As a rule a company are only fully responsible for such things as the passenger is taking with him for his own personal use. If he is taking luggage by train for the use of some other person, the company are not under the liability of common carriers if the things are lost. Thus, where a servant travelled by railway and took

with him his own personal luggage, and also a portmanteau belonging to his master, and this portmanteau was lost, it was held that the company were not liable, as they had not contracted to carry the master's luggage, the master not being a passenger by the train (*p*).

In another case (*q*) a servant was a passenger on a railway, and took with him a portmanteau containing livery which was the property of his employer. The portmanteau was negligently dropped on to the line by a porter and run over by a train and the clothes destroyed. The employer sued the company for the value of the livery, and the company defended the action on the ground that they had made no contract with the employer. It was held, however, that although there was no contract with the employer, still the company were bound to treat the luggage with reasonable care, and there was a duty upon them not to do any act to injure another person; therefore they were liable to the owner of the goods for the negligent act of their servant although there was no contract with the owner. It is to be noticed in this case that if the servant had sued, he also could have recovered. The contract was with him; the luggage was certainly ordinary personal luggage; and it was being carried for the servant's own personal use.

Although, as a general rule, a railway company are obliged to carry the personal luggage of an ordinary passenger without extra payment, there is nothing to prevent a company agreeing with a passenger that he shall not exercise his right to take luggage. Where a company run cheap excursion trains or give cheap return tickets to holiday resorts, it is not unusual for the company to issue tickets on condition that no luggage shall be taken, or no more than the passenger can carry in his hand. As these tickets are issued at a rate generally far below what the company have the right to charge, the passenger taking one on such a condition agrees

(*p*) *Becher v. G. E. Ry. Co.* (1870), L. R. 5 Q. B. 241.

(*q*) *Meux v. G. E. Ry. Co.*, [1895] 2 Q. B. 387.

with the company to give up his right to take luggage in consideration of being carried at the cheap rate. Such an agreement is perfectly legal. Thus, in the case of *Rumsey v. North Eastern Ry. Co.* (r), the company, in the summer, issued cheap return tickets of all classes to Whitby, by ordinary trains, at prices very much below the ordinary fares. The tickets were issued upon the condition that passengers travelling with them should not take any luggage. The plaintiff, who knew of this condition, took a first class return ticket to Whitby at the reduced rate. By a trick he got a portmanteau put into the train, and it was carried to Whitby. There, however, the company demanded the sum of 3s. 1d. for the carriage of the portmanteau, and, on payment being refused, they declined to give up possession. The plaintiff accordingly sued to recover his portmanteau, and the company defended the action on the ground that they had a lien upon the portmanteau for the carriage thereof, and were not obliged to give it up until the 3s. 1d. was paid. In this defence the company were successful; the Court holding that in the circumstances the plaintiff had agreed to give up the right which an ordinary first class passenger has of taking luggage free, in return for his being carried for a much less sum than the company were entitled to charge, and that there was nothing to prevent such an agreement from being made.

In all cases where the ordinary personal luggage of a passenger is carried by a company, without any special agreement, in the van of the train by which the passenger is travelling, the company are liable for the luggage as common carriers. With regard, however, to luggage not carried in the van, but taken by the passenger in the compartment along with him, the company are not fully liable, for full control over such luggage is not given to the company. If the passenger himself takes charge of the luggage, the position of the company is very much modified. When a passenger takes his luggage in the compartment

(r) (1863), 32 L. J. C. P. 244.

with him, he relieves the company of a large part of their responsibility; and if while under his own control the luggage is lost or damaged without any negligence on the part of the company, the company, as a rule, are not liable. In *Talley v. Great Western Ry. Co.* (s) the plaintiff was travelling from Cheltenham to Reading. At Cheltenham his portmanteau was placed, at his request, by a servant of the company, under the seat of the first class compartment in which he travelled. At Swindon he got out and went into the refreshment room, leaving his portmanteau in the train. He was away for nearly ten minutes, during which time the train had been moved to another platform. On his return to the train he could not find his carriage and got into another one for the rest of the journey. The train was a full one, as there had been races at Cheltenham, and many passengers were returning to London from the races, some of whom seem to have been of more than doubtful reputation. The portmanteau was found in the carriage when the train reached London, but it had been cut open and some of its contents stolen. The plaintiff accordingly sued the company to recover the value of the property he had lost. The jury found that the company had been guilty of no negligence, and that the plaintiff had contributed to his loss by his own negligence. On this finding it was held that the company were not responsible, as the plaintiff had himself assumed control of his luggage, and was therefore bound to take such care of it as might be expected from an ordinary prudent man, and the loss would not have happened but for his failure to take such care.

But even in respect to luggage carried in the compartment with the passenger, the railway company are probably liable as common carriers, with this modification: that as the passenger has interfered with the company's control, the company are not liable for loss due to that interference. If, however, there were a collision, and the luggage carried in the compartment were destroyed,

(s) (1870), L. R. 6 C. P. 44.

it can hardly be doubted that the company would be liable as common carriers. They would therefore be responsible for the loss of the luggage, even though no negligence could be proved against them ; whereas, in the case of the passenger himself (as is explained in the next chapter), it would be necessary to prove negligence in order to make the company liable.

The liability of a railway company for passengers' luggage begins the moment it is handed to a servant of the company for the purpose of being placed in the train, even though the train may not be due to start for some considerable time. It is part of the ordinary duty of a porter to take charge of a passenger's luggage on his arrival at a station of departure while the passenger goes to the booking office to take his ticket ; and the company are responsible for this luggage in spite of notices that they will not be liable for luggage left in the charge of porters (*t*). It must not, however, be left in the charge of a porter for an unreasonable time before the train starts, and should be deposited in a cloak room if a prolonged wait at a station is necessary. In *Bunch v. Great Western Ry. Co.* (*u*) Mrs. Bunch arrived at Paddington at 4.20 p.m. on Christmas Eve with a bag and two other articles of luggage, in order to travel to Bath by the train advertised to start at 5 p.m. A porter took charge of the three articles, put them on a barrow and wheeled them on to the platform. The lady then told the porter she wished to take the bag in the carriage with her, and asked him if it would be safe to leave it with him while she went to the front of the station to meet her husband. The porter replied that it would be quite safe. The lady accordingly went away, leaving the porter standing by the luggage, the train not having then been drawn up to the platform. The bag had not been labelled ; the other two had been. Ten minutes after Mrs. Bunch

(*t*) *Lovell v. London, Chatham, and Dover Ry. Co.* (1876), 34 L. T. 127.

(*u*) (1888), 13 A. C. 31.

left her luggage with the porter she returned with her husband to the place where it had been left. They found that the train had come up, and that the two articles which had been labelled had been put in the van, but they could not find any trace of either the bag or the porter. The bag was never seen again, and the lady and gentleman sued the company for the value of it and its contents. The County Court Judge found, as a fact, that the time when the luggage was entrusted to the porter was a reasonable time before the departure of the train, and that the porter was guilty of great negligence in not being ready to put the bag into the carriage with the lady on her return; and judgment was given against the company for 18*l*. This decision was taken through all the Courts to the House of Lords, where it was finally upheld. The Lord Chancellor said that it was open to the County Court Judge to find that the lady had not arrived at Paddington too long before the time for the train to start, as it was Christmas Eve, when a great many persons were travelling, and the company were receiving luggage for the train without objection, and were issuing tickets for the train within a very short time of the arrival. He held that as soon as the luggage was delivered to the porter it was in the custody of the company for the purposes of the journey; and that the company received the luggage as common carriers; and that a railway company in accepting luggage to be carried in a carriage with the passenger enter into a contract as common carriers, subject to this modification, that if loss happens by reason of the want of care of the passenger himself, in respect of his interference with the company's exclusive control of the luggage, the company are not liable.

In *Steers v. Midland Ry. Co.* (x) the plaintiff booked sleeping berths for his wife and himself in a night express train from St. Pancras to Aberdeen. They arrived at St. Pancras from a small station on the defendant company's line rather more than an hour before the time for the

(x) (1920), 36 T. L. R. 703.

departure of the express. They were met by an inspector who told them that their train was already at the platform and who called a porter and directed him to take their luggage to the sleeping compartment. The plaintiff asked the inspector whether the luggage would be quite safe if they went away for a time, and he replied, "Perfectly." The two passengers then left the station for half an hour which they spent having a meal in a restaurant outside. When they returned to the train they were informed that thieves had been on the train, and they discovered that their luggage had been stolen. The plaintiff sued the company for the value of the luggage and succeeded, the court holding that the company had taken control of the luggage down to the time of its loss, and that there had been no negligence on the plaintiff's part.

At the end of the journey it is the duty of the company to deliver the luggage carried in the van to the passenger on the platform. They are only bound to deliver it on the platform, and must allow the passenger a reasonable time within which to claim it and take it away. The passenger's duty is to be ready to receive it within a reasonable time ; and if he is not so ready and does not take it within a reasonable time the company cease to be responsible (y). In *Firth v. North Eastern Ry. Co.* (z) the plaintiff was a passenger from Hull to Leeds, and had with him a portmanteau which was put into the van at Hull. When he arrived at Leeds the plaintiff picked up a portmanteau from the platform, put it into his carriage and drove to his house, which was about a mile distant. He then discovered that he had by mistake carried off the portmanteau of another person whose name it bore on a label, and he at once drove back with it to the station. His own portmanteau had by that time disappeared, and was not heard of again. He sued the company for the value of his lost property, but the High Court held that he had not been ready to take

(y) *Patscheider v. G. W. Ry. Co.* (1878), 3 Ex. D. 153.

(z) (1888), 36 W. R. 467.

possession of his luggage within a reasonable time of the arrival of the train; that at the expiration of such time the company's liability as carriers came to an end; that the subsequent loss was due to his own negligence; and that therefore the company were not liable.

After a reasonable time has elapsed the contract of the company has been performed, and if the passenger is not prepared to take away the luggage he should make a fresh contract by placing the luggage in the cloak room. Porters have no authority to take charge of luggage after the journey is ended, and if a porter does take charge of it he is acting outside the scope of his authority, and the company are not responsible for his negligence or misconduct. In *Hodkinson v. London and North Western Ry. Co.* (a) the plaintiff arrived at a station at which she expected to be met. Two boxes belonging to her were taken out of the van and placed on the platform. There was no one to meet her, and a porter offered to put her luggage in a cab. She, however, refused to have a cab, and told the porter she would walk and send for her boxes. Thereupon the porter undertook to put them aside and take care of them till they should be fetched. The plaintiff then left the station, leaving her boxes in the custody of the porter. An hour and a half afterwards she returned to the station for her boxes, and found that one had disappeared. The porter's explanation was that he had allowed a woman to take it away believing that she was the owner. The woman was not known to the plaintiff, and had no authority to obtain the box. The plaintiff sued the company to recover the value of her box and its contents. The High Court, however, held that when the luggage was taken from the van and placed at the plaintiff's disposal on the platform the responsibility of the company came to an end. The porter was not acting within his authority as the company's agent in taking charge of the luggage, therefore the company were not

(a) (1884), 14 Q. B. D. 228.

responsible for his negligence. Judgment was accordingly given in favour of the company.

Where, however, a company provide porters (as is the ordinary custom) to carry luggage from the train to the vehicle which is to take it away, the company's liability as carriers continues till the porters have performed their duty. Therefore a company would be responsible if a porter, in carrying a box from the train to a cab, lost it, or had it stolen from him, or injured the box or its contents (*b*).

It is usual for a railway company to give notice, in their published notices or regulations, that they will not be responsible for luggage left at their stations unless the same is formally put under their charge by being deposited in a cloak room. A company do not receive articles deposited in a cloak room as carriers, but as warehousemen, and subject to any conditions of which the depositor has notice. The Railway and Canal Traffic Act, 1854, does not apply to such articles, therefore it is not necessary that conditions should be either signed or reasonable in order to be binding on the depositor (*c*).

The liability of a railway company as warehousemen has been already explained (*d*), but in respect of cloak rooms their liability chiefly depends on the conditions of the deposit. When an article is put into a cloak room, it is the custom for the company to hand the depositor a printed ticket containing the conditions of the contract. The depositor as a rule will be bound by those conditions. The conditions vary considerably as framed by the different companies. It seems to be common to all, however, to make a condition limiting liability for parcels of over a certain value, unless a sum beyond the usual small fee is paid. In *Pratt v. South Eastern Ry. Co.* (*e*) the plaintiff deposited a gun in a cloak room of the defendant company. He paid 2*d.*, and was handed a ticket on which was printed the following:—

(*b*) *Butcher v. L. & S. W. Ry. Co.* (1855), 24 L. J. C. P. 137.

(*c*) See *Van Toll v. S. E. Ry. Co.* (1862), 31 L. J. C. P. 241.

(*d*) *Ante*, p. 91.

(*e*) [1897] 1 Q. B. 718.

"IMPORTANT NOTICE.

"The company will not be responsible for articles left by passengers at the station unless the same be duly registered, for which a charge of 2d. per article will be made, and a ticket given in exchange; and no article will be given up without the production of the ticket, or satisfactory evidence of the ownership being adduced. A charge of 1d. per diem, in addition, will be made on all articles left in the luggage room for a longer period than twenty-four hours. The company will not be responsible for any package exceeding the value of 10l."

The gun, which was worth considerably more than 10l., was injured while in the cloak room by the negligence of the company's servants. The plaintiff accordingly brought an action against the company to recover damages for the injury. It was contended for the plaintiff that the condition only protected the company against liability for loss, not against liability for injury due to negligence. The High Court, however, held that the plaintiff could not succeed, as the company were protected by the condition against all liability for an article of over 10l. in value, either for loss or injury.

In *Skipwith v. Great Western Ry. Co.* (f) the condition on a cloak room ticket was as follows:—

"The company are not to be answerable for loss or detention of, or injury to, any article or property exceeding the value of 5l., unless at the time of its delivery to them the true value and nature thereof be declared by the person delivering the same, and a sum at the rate of 1d. for every 20s. of the declared value be paid for such article of property for each day, or part of a day, for which the same shall be left, in addition to the above-mentioned charge.

"This ticket must be returned when the articles are delivered up."

The plaintiff deposited a bag at Paddington, paying 2d., and making no declaration of value. The bag was, by the mistake of a servant of the company, handed to the wrong person, and was never again heard of. The plaintiff therefore sued the company for the value of his bag, which was fifty guineas. It was held, however, that the plaintiff could not succeed, as "loss" includes "mis-

(f) (1869), 59 L. T. 529. See *Lyons & Co. v. Caledonian Ry. Co.* (1909), S. C. 1185; and *Gibaud v. G. E. Ry Co.* (1921), 90 L. J. (K. B.) 194.

delivery," and the company were protected by the conditions of the contract.

Where a company are not protected by any condition, the liability of the company appears to be that of warehousemen at common law. Therefore they are liable for loss or injury caused by negligence, but are not liable for loss or injury not referable to any negligence on the part of the company or their servants. There is, however, probably an exception to this in the case of mis-delivery. Warehousemen appear to be liable if they deliver the goods to the wrong person, independently of negligence. "Warehousemen are not only responsible for losses which arise by their negligence, but also for losses occasioned by the innocent mistake of themselves and of their servants in making a delivery of the goods to a person not entitled to them. For it is a part of their duty to retain the goods until they are demanded by the true owner; and if by mistake they deliver the goods to a wrong person they will be responsible for the loss, as upon a wrongful conversion" (g). Many companies have a condition on their cloak room tickets that they shall not be responsible for any article which is delivered to the person producing the ticket. It is somewhat surprising to find that some companies have no such condition. If not protected by any condition, a company is probably responsible for delivery of an article to the wrong person, even though the person produced the ticket, and there was no negligence on the part of the company.

The conditions of a cloak room ticket usually provide for the payment of certain charges in case an article deposited is left in the care of the company for longer than a certain time. The company has a lien upon the article deposited for such charges, provided the depositor had a right to deal with the article.

In *The Singer Manufacturing Company v. London and South Western Ry. Co.* (h) a man was in possession of a

(g) Story on Bailments, 7th ed. § 450.

(h) [1894] 1 Q. B. 833.

sewing machine belonging to the plaintiffs under a hire-purchase agreement at a weekly rent. He deposited this article in the cloak room at Waterloo, and received a ticket, a condition of which was that, for an article left for more than forty-eight hours, 1*d.* a day should be paid for the first month, 2*d.* a week afterwards. The depositor owed no rent to the plaintiffs when he deposited the sewing machine; but afterwards he made default in the weekly payments, and still left the machine at Waterloo. After it had been there for nearly six months the plaintiffs, who were then entitled to have it back, found out where the sewing machine was, and demanded it from the company. The company were ready to hand it over provided their charges of 4*s.* for warehousing were paid. The plaintiffs refused to pay, and sued the company to recover the machine. It was held, however, that the company had a lien even against the owner for their charges, and were not bound to hand over the machine to the plaintiffs till the 4*s.* was paid.

The last mentioned decision depended on the fact that when the machine was deposited the depositor had a right to deposit it if he chose. If a thief deposits a stolen article in a cloak room, a railway company have no lien for charges, and no right whatever to detain the article from the rightful owner.

With regard to the labelling of passengers' luggage, it is probably lawful for a company to refuse to accept the luggage unless it is properly labelled. If, however, they do accept luggage which is not labelled, and the luggage is lost, the fact that it was not labelled will of itself be no defence to an action for damages for the loss. Even a signed condition that a company shall not be responsible for luggage "unless fully and properly addressed with the name and destination of the owner" has been held to be void as being unreasonable (*i*). It is clear, however, that a company would not be liable for loss caused directly by any wrong address.

(*i*) *Cutler v. North London Ry. Co.* (1887), 19 Q. B. D. 64.

Where a railway company issue a through ticket from a station on their own line to a station on the line of another company, they contract to carry the passenger and his luggage safely to the station on the other company's line. The contracting company, therefore, are under the liability of common carriers for the luggage throughout the whole journey, and will be liable for loss of or injury to the luggage, even if such loss or injury occurs on the other line. A railway company have the right, however, to protect themselves by contract against loss occurring on the line of another company. Such a contract is not within the provisions of sect. 7 of the Railway and Canal Traffic Act, 1854, as it has been held that the section applies only to companies carrying on their own lines, and that, with regard to traffic on the lines of other companies, they may make such conditions as they please, which will be binding on the sender of goods if brought to his knowledge, although not signed and although not reasonable. In *Zunz v. South Eastern Ry. Co.* (*k*) the plaintiff took a through ticket from London to Paris. The ticket was in the form of a book consisting of three coupons, the first from London to Dover, the second from Dover to Calais, and the third from Calais to Paris. On the ticket was printed a condition that the South Eastern Company would not be responsible for loss or detention of, or injury to, the luggage of passengers except whilst travelling by the company's own trains or boats. The plaintiff did not sign the ticket. The plaintiff's luggage was lost on the Great Northern Railway of France between Calais and Paris, and he sued the defendant company for damages for his loss. It was held, however, that the defendant company was protected from liability by the conditions of the special contract, although he had not signed it, as sect. 7 of the Railway and Canal Traffic Act, 1854, applies only to lines belonging to or worked by the contracting company.

But whether the contracting company is liable or not,

(*k*) (1869), L. R. 4 Q. B. 539, *ante*, p. 56.

where a through ticket has been taken and luggage has been lost on the line of the non-contracting company, the latter company is liable if it can be shown that the loss occurred on their line (*l*). To make them liable, however, proof must be given that the luggage was delivered to them. And, further, where protected by contract, the contracting company remain liable for loss unless they can prove that they delivered the luggage to the other company. Thus, in *Kent v. Midland Ry. Co.* (*m*), the plaintiff took a through ticket from the defendant company from Bath to Chester. The journey was from Bath to Birmingham on the defendant company's line; and thence to Chester on the London and North Western Company's line. Both companies ran into the same station at Birmingham, where the plaintiff had to change. His luggage was seen at Birmingham on a truck, being taken from the Midland train towards the London and North Western train, and that was the last that was seen of it. The plaintiff sued the Midland Company for the value of his lost property, and the company defended the action on the ground that the luggage was safe until it was off their line, and that they were protected by the following condition appearing in their time-tables and referred to on the ticket issued:—

“The granting of tickets to passengers to places off the company's lines is an arrangement made for the greater convenience of the public; but the company does not hold itself responsible for any delay, detention, or other loss or injury whatsoever arising off its lines.”

It was held that, except for this condition, the defendant company would be clearly liable. The condition protected them provided they were able to show that they had delivered the luggage to the other company. They were, however, unable to prove that they had ever delivered the luggage to the London and North Western Company, and in the absence of such proof the plaintiff was entitled to succeed.

(*l*) *Hooper v. L. & N. W. Ry. Co.* (1880), 50 L. J. Q. B. 103.

(*m*) (1874), L. R. 10 Q. B. 1.

PART II.

THE CARRIAGE OF PERSONS.

CHAPTER IX.

THE LAW OF NEGLIGENCE.

THE prime object of the promoters of the earliest of our railway companies was the carriage of persons. Little regard was paid at first to the carriage of goods. The idea was that the trains were to take the place of the fast stage-coaches, and it was not contemplated that they should carry anything of great bulk or weight. The importance to railway companies of their goods traffic at the present time needs no explanation. The Railway and Canal Traffic Act, 1854, provides (*a*) that every railway company shall, according to their powers, afford all reasonable facilities for receiving, forwarding, and delivering of traffic upon their own railway, and shall also facilitate through traffic with other communicating railways. "Traffic" includes passengers. The Act does not make a railway company common carriers of passengers, and as sect. 7 (*b*) does not apply to passengers, there is nothing in the Act to prevent a company from making any sort of conditions in contracting to carry persons. There is no need, either, that a contract to carry a person should be in writing or signed by the person in order to be binding upon him, provided that the conditions of the contract are sufficiently brought to his notice. In fact, this Act, which is of such importance with regard to the carriage of goods, has little to do with the obligations of a railway company towards an individual passenger.

(*a*) Sect. 2.

(*b*) See *ante*, p. 33.

The Railway Clauses Act, 1845 (c), provides that nothing in that Act shall extend to make a company liable further than they would be liable if they were stage-coach proprietors. Now stage-coach proprietors and other carriers of persons were never considered in law to be insurers of their passengers. Therefore there is a great difference between the responsibility of railway companies as carriers of goods and their responsibility as carriers of persons. As carriers of goods they are insurers of the safety of the goods, unless they are protected by some special contract. As carriers of persons they are never insurers of the safety of their passengers. They are, however, bound to use the greatest amount of care and forethought which is reasonably necessary to secure the safety of the persons whom they undertake to convey in their trains. The omission to use such care and forethought amounts to negligence, and they are liable in damages if injury is caused through negligence on the part of the company or of any servant of the company while acting within the scope of his employment. But the degree of care demanded of a railway company is not the highest possible, but only such as is *reasonably* necessary. As to the standard of care required in the case of any carrier of passengers the Court of Appeal has declared that—"It is sufficient that the carrier should adopt the best known apparatus, kept in perfect order and worked without negligence by the men employed. If he does that, he ought not to be responsible for the consequences of an extremely rare and obscure accident which cannot, in a business sense, he prevented by any known means" (d). Hence the liability of a railway company for the safety of passengers depends, not on the law of carriers, but on the law of negligence. Negligence has been already defined (e). It may further be shortly defined as "the absence of care according to the circumstances" (f). It may consist of an act or an

(c) Sect. 89. (d) *Newberry v. Bristol Tramways Co.* (1912), 107 L. T. 801.

(e) See p. 4, *ante*.

(f) Per Willes, J., *Vaughan v. Taff Vale Ry. Co.* (1860), 5 H. & N. at p. 688.

omission. A person is guilty of negligence who does an act which, in the circumstances, a prudent and reasonable man would not do. A person is equally guilty of negligence who omits to do something which, in the circumstances, a prudent and reasonable man would do. Negligence, as a rule, gives rise to a cause of action for damages by any person injured by the negligence against the person answerable for the negligence. The damages recoverable must not be too remote ; they must be the natural result of the negligence (*g*). Every person is answerable for the consequences of his own negligence, and also for the consequences of the negligence of any servant of his while acting in his capacity as servant, or, as it is expressed, while acting "within the scope of his employment." If a servant is engaged in an act which he is not authorized or employed to do, his master is not responsible for negligence on the servant's part in doing that act. Where a railway company is liable for negligence, the negligence is almost necessarily that of some servant. For example, a signalman by mistake signals "line clear" when a train is on the line ; or an engine-driver, in a moment of thoughtlessness, runs past a signal at "danger." A collision is the consequence, and passengers are injured. Here the company are liable for the negligence of the signalman or of the engine-driver, and must compensate the injured persons. The various ways in which negligence may be committed by the servants of a railway company are infinite in number, and other examples will readily suggest themselves.

In order to make a company answerable for injury suffered by a person, negligence must be proved which was the cause of the injury. If a passenger is injured on a railway, and no negligence can be proved on the part of the company or any servant of the company, the passenger has no right of action against the company. As to goods, however, the company is an insurer, and may be liable, although there has been no negligence for which the com-

(*g*) See *ante*, pp. 84 *et seq.*

pany is responsible. Thus, if a train were wrecked by the act of some person over whom the railway company had no control at all, and a passenger were injured and his luggage destroyed, he could get damages from the company for the loss of his goods, because the company were insurers of their safety ; but he could not get damages for the loss of a limb, because the company were not insurers of his person.

In *Daniel v. Metropolitan Ry. Co.* (h) the Corporation of London were carrying out works which involved the placing of large iron girders over the railway of the defendants. The work was being executed by contractors of great eminence engaged by the Corporation, who were entirely independent of the railway company, and over whom the company had no control whatever. While one of the girders was being placed in position across the railway, it over-balanced and fell upon a passing train, killing and injuring several passengers, amongst the latter being the plaintiff. The plaintiff accordingly brought this action against the railway company, alleging that the defendants had been negligent in not having a man to stop dangerous work while a train was passing. The House of Lords held, however, that the company were not liable, as they had been guilty of no negligence, and were not answerable for the negligence of persons over whom they had no control ; neither were they bound to take precautions against possible negligence on the part of such persons, whose skill and carefulness they had no reason to doubt.

In *Wright v. Midland Ry. Co.* (i) the London and North Western Railway Company had the right to run over a small portion of the defendant company's railway near Leeds. At the junction was a signal-box under the control of the defendant company. Upon the occasion of the accident for which this action was brought, the signal-man had set the signals in favour of a train of the defendants and against any train of the London and North Western

(h) (1871), L. R. 5 H. L. 45.

(i) (1873), L. R. 8 Ex. 137.

Company. The plaintiff was a passenger in a Midland train, which, in obedience to the signals, proceeded along the portion of the line over which both companies had power to run. Being on this portion of the line, it was run into by a London and North Western train, the driver of which had disregarded the signals and run past the junction. In the collision the plaintiff was injured, and sued the Midland Company for damages. The jury found that the defendant company had been guilty of no negligence, and that the collision was entirely due to the negligence of the London and North Western Company. It was held that the Midland Company were not liable. Bramwell, B., said: "The act that did the damage was solely and exclusively the act of the North Western Company. Now why, under those circumstances, should the defendants be liable? If this had been the case of goods they would have been liable, because they are then insurers; but here the duty of the defendants, according to the decided cases, is this: they enter into a contract that all persons connected with the carrying, and with the means and appliances of the carrying, with the carriages, the road, the signalling, and otherwise, shall use care and diligence, so that no accident shall happen. But they contract no further. If they were to contract that everybody should use care and diligence, their duty would extend to strangers. But it is conceded that they have no such duty as that. They have no contract or duty that strangers to the railway (if one may use such an expression) shall do nothing wrong, either by wilfulness or negligence." In both these cases it is to be noticed that the plaintiff might have succeeded in an action brought against other defendants.

Another good example is supplied by a case from India. In *East Indian Ry. Co. v. Kalidas Mukerjee* (k) two Hindoos travelled by the defendants' railway in order to attend a wedding. It is customary in that part of the world to let off large quantities of fireworks in the course

(k) [1901] A. C. 396.

of wedding festivities, and these two men took with them a parcel of bombs and other fireworks for that purpose. They put the parcel under the seat of a third class smoking carriage, in which a third passenger was seated. While the train was proceeding the fireworks exploded, and all three passengers were killed. The father of the third man brought an action against the railway company for damages for the loss of his son, alleging that the company had been negligent in permitting the two men to take the dangerous parcel into the train. The plaintiff succeeded in the Indian Courts ; but, on appeal to the Privy Council, it was held that railway companies are not liable as common carriers of passengers independently of negligence, and here there was no evidence whatever that there was anything in the appearance of the parcel to cause the company's servants to suspect that it contained anything dangerous. Therefore there was no duty upon the company to examine the parcel, and, as they had been guilty of no negligence, they were not liable.

Again, although a railway company are bound to use all due care, skill and foresight to insure the safety and sound condition of their rolling stock, they are not liable if injury occurs through some defect which no skill or reasonable foresight could detect or guard against. It seems to be a well-established fact that in the casting of axles and tyres there do sometimes occur flaws or defects in the steel which are not capable of discovery by any of the ordinary accepted tests. These latent defects often have a tendency to extend inside the metal, so as not to be discoverable until the danger point is reached. Then an axle, which, perhaps, has borne the usual strain for years, suddenly gives way, and an accident results. In *Readhead v. Midland Ry. Co.* (1) the plaintiff sued the defendant company for damages for injuries received in an accident caused by the breaking of the tyre of a wheel of the carriage in which he was travelling. It was proved that the breaking was due to a latent defect in the tyre, which

(1) (1869), L. R., 4 Q. B. 379.

was not attributable to any fault on the part of the manufacturer, and which could not have been detected before the breaking. The jury found for the defendants on the ground that there had been no negligence on their part. On appeal, it was contended that a railway company warrants that their rolling stock is sound, and that they are liable for injuries caused by its being unsound or unsafe, whether negligence can be proved against them or not. The Court, however, held that railway companies do not make any such contract of warranty; they only contract to take due care to carry their passengers safely. "Due care" means a very high degree of care, and throws on companies the duty of exercising all diligence to see that whatever is required for the safe conveyance of their passengers is in fit and proper order and to periodically test and examine their vehicles (*m*). But this duty does not make them responsible for injuries to passengers arising from a latent defect in the machinery they are obliged to use, which human skill could neither have prevented nor detected. Such cases are not common, but they occur occasionally, and when they do the great difficulty is to convince a jury that all reasonable skill and care were used in the examination and testing of the damaged article. If such care and skill were not used, then the company is guilty of negligence.

In all cases, therefore, the question must be: Was there negligence? If there was no negligence a railway company cannot be responsible for personal injuries. Now, as a general rule, he who asserts that there has been negligence must prove his assertion. But there are cases in which it is said that *res ipsa loquitur*, or the fact speaks for itself; that is, in some circumstances the mere happening of an accident affords evidence of negligence. "Where something happens which would not happen, if ordinary care and skill were used, the happening of that is evidence on which a jury may find that there has been

(*m*) *Bremner v. Williams* (1824), 1 C. & P. 414.

negligence" (n). There are many things which it is safe to assume do not happen unless there has been negligence. In such cases as, for instance, a collision between two trains of the same company (o), or the breaking of a wheel or axle, it is only necessary for a plaintiff to prove the fact, and it will be presumed that there was negligence. The burden will then be on the railway company to disprove the negligence, if possible. In *Dawson v. Manchester, Sheffield and Lincolnshire Ry. Co.* (p) the plaintiff was injured through a train running off the line. It was held that the mere fact that the train ran off the line was sufficient proof of negligence, until the company proved the contrary; and that in the absence of any explanation as to the cause of such an accident the company were liable. The fact that the door of a carriage flew open has been held to be evidence of negligence in the fastening of the door (q). Again, a railway crossed over a highway by means of a bridge resting on brick piers, which was the property of a railway company, and which they were bound to keep in order. As the plaintiff was passing under the bridge a brick fell upon him from the top of one of the piers and injured him. It was held that the mere fact of the brick falling out, without explanation, was evidence of negligence (r).

In all such cases, however, it is open to the railway company to explain the cause of the accident, and to show, if possible, that they were not to blame, and that the accident was not due to any negligence on their part. Thus, in *Hart v. Lancashire and Yorkshire Ry. Co.* (s), the plaintiff sued for damages for injuries received in a collision between an engine and the train in which he was a passenger. The plaintiff was travelling from Ashton to Manchester on a branch line of the defendant company.

(n) Per Brett, J., *Gee v. Metropolitan Ry. Co.* (1873), L. R. 8 Q. B. at p. 175.

(o) *Skinner v. L. B. & S. C. Ry. Co.* (1850), 5 Exch. 787.

(p) (1862), 5 L. T. 682.

(q) *Gee v. Metropolitan Ry. Co.* (1873), L. R. 8 Q. B. 161.

(r) *Kearney v. L. B. & S. C. Ry. Co.* (1871), L. R. 6 Q. B. 759.

(s) (1839), 21 L. T. 261.

Near the junction of this branch with the main line there were sidings and a coaling shed. A servant of the company, in the ordinary course of his duties, took an engine to the shed to be coaled. It was then his duty to take the engine a little way along a siding, and when he had passed certain points to stop, reverse the engine and run back to the engine shed. On this occasion, after coaling, he was moving the engine out, but before he reached the place where he ought to have stopped and reversed he was seized with a fit and fell across the foot-board of the engine in a state of insensibility. The consequence was that the engine, instead of being backed into the engine shed, ran along the siding towards the main line. Just at that time an up and a down express train were approaching the junction at full speed. The signalman in control of the points, however, saw what had happened, and did the only thing possible to prevent a most fearful accident; that was, to move the points so as to turn the runaway engine on to the Ashton branch. The express trains were saved, but the engine ran along the branch and collided with the train in which plaintiff was travelling. The jury found a verdict in favour of the plaintiff; but it was held that the verdict was bad as there was no evidence whatever of negligence on the part of the company, the real cause of the accident being the sudden illness of the man, a cause beyond the control of the company.

But although, in general, a railway company are responsible for injury caused by negligence, a plaintiff is not entitled to succeed in an action for damages against the company if they can prove that the plaintiff was himself guilty of negligence, which was the immediate and real cause of the injury. In such circumstances the plaintiff is said to have been guilty of contributory negligence. If a person bring about injury to himself by his own want of ordinary care, he is not entitled to compensation from another person, even if he can show that there was negligence on the part of that person which helped to bring

about the injury. If the plaintiff in an action is unable to prove any negligence against the defendant, he cannot succeed, and the question of contributory negligence on the plaintiff's part cannot properly arise. The question does arise where there has been negligence on both sides. In such circumstances, where the plaintiff's own negligence has brought about an accident, he cannot recover unless he can shift the burden on to the defendant by proving that, even though he was negligent, his negligence would not have caused the injury if the defendant had taken ordinary care. In *Davey v. London and South Western Ry. Co.* (t) the plaintiff sued for damages for injuries he had received by being knocked down by a train while walking over a level crossing. He lived near the crossing, and was well acquainted with it. On the down side, from which he crossed, it was difficult for anyone to see up or down the line until within a yard or two of the rails ; but from the six-foot there was an uninterrupted view for a long distance both ways. He was knocked down and injured by an up train. There was a servant of the company employed as a gate-keeper at the crossing, whose duty it was to open or shut the gates which regulated the passing of wheeled vehicles over the railway. He was standing near at the time of the accident, but gave no warning to the plaintiff, nor did the engine-driver whistle. The plaintiff admitted that although, as he was crossing, he looked along the down line, he did not look along the up line, and admitted that if he had looked he must have seen the train coming. The Court of Appeal, in these circumstances, held that the plaintiff could not succeed, as, although there was evidence of negligence on the part of the defendants in not taking precautions to warn foot passengers, and in not whistling, still, the accident was solely caused by the plaintiff's own failure to use the ordinary care which a reasonable man would have used, *i.e.*, by his contributory negligence. Brett, M. R., said : " In such an action as this the burthen of proof

(t) (1883), 12 Q. B. D. 70.

lies entirely upon the plaintiff. There are two things for him to establish, one is affirmative and the other negative. It is for the plaintiff to show that the accident which happened to him was caused by a negligent act of the defendants, or of those for whose negligent acts the defendants are liable, and that the accident was produced as between him and the defendants solely by the defendants' negligence in this sense, that he himself was not guilty of any negligence which contributed to the accident, because, even though the defendants were guilty of negligence which contributed to the accident, yet, if the plaintiff also was guilty of negligence which contributed to the accident, so that the accident was the result of the joint negligence of the plaintiff and of the defendants, then the plaintiff cannot recover, it being understood that if the defendants' servants could, by reasonable care, have avoided injuring the plaintiff although he was negligent, then the negligence of the plaintiff would not contribute to the accident." In another case (*u*) Willes, J., said: "If both parties were equally to blame, and the accident the result of their joint negligence, the plaintiff could not be entitled to recover; if the negligence or default of the plaintiff was in any degree the proximate cause of the damage, he could not recover, however great may have been the negligence of the defendant; but if the negligence of the plaintiff was only remotely connected with the accident, then the question is whether the defendant might not by the exercise of ordinary care have avoided it."

It is to be noticed that what may amount to contributory negligence in the case of an adult may not amount to contributory negligence on the part of a child. Everyone is bound to use due care, and if he brings injury upon himself through not using an ordinary and reasonable amount of care, he cannot, as a rule, hold some other person answerable for his injuries. But the same amount of care cannot be expected from a young child as from a

(*u*) *Tuff v. Warman* (1858), 27 L. J. C. P. 322.

grown person. Hence, where children have a right to go upon, or are admitted to, the premises of a railway company, the company are bound to take any reasonable precautions to secure their safety. Thus, where a railway company erected a foot-bridge over their line, the sides of which were fenced with ornamental open ironwork, and a child of five years of age, lawfully on the bridge, fell through the fencing, the openings being too large, it was held, in an action for damages by the child, that the company were liable. It was an accident that could hardly have happened to an adult, even if the openings had been wide enough for the body of an adult to pass through. Kelly, C. B., said: "As to the question of contributory negligence, there is here an act done by the plaintiff contributing in some degree to the accident; but I do not think that in the case of so young a child you can say it amounted to contributory negligence" (x).

If, however, a child is under the care of an adult, and the child is injured in such circumstances that the negligence of the adult contributed to the injury, the company are not liable. Thus, in *Waite v. North Eastern Ry. Co.* (y), a woman with a child of five years of age in her care, after taking tickets for herself and the child, negligently crossed the line when a train was close at hand. She was run over and killed, and the child was injured, and brought an action against the company for damages. The jury found that there was negligence on the part of the company and also negligence on the part of the deceased woman. It was held that the child was so identified with the deceased that he was not entitled to succeed in the action, and that a child of so tender an age as to be unable to take care of itself is carried on condition that it is taken proper care of by the person in whose charge the child is.

Where negligence is the cause of injury, only such damages can be recovered as are the natural and reasonable

(x) *Lay v. Midland Ry. Co.* (1876), 31 L. T. 30. See *Cooke v. Midland G. W. Ry. of Ireland*, [1909] A. C. 229, and *post*, pp. 156, 157.

(y) (1859), 28 L. J. Q. B. 258.

result of the negligence. In cases of injury to property, the damages are, as a rule, easily measured ; but where the injury is to the person, it is a matter of much greater difficulty to measure the damages. Some of the elements of damage are easy to calculate ; for instance, loss of wages and medical expenses. But it is impossible, by any rules of valuation or arithmetic, to assess the worth of a lost eye or a lost leg, or the compensation properly payable for pain and suffering. Hence, in such cases a jury have practically a free hand, and award such damages as they think will tend to console the injured person for his suffering (z). A jury ought to assess damages without regard to the means of the defendant, and evidence is not allowed as to his means. But it is impossible to prevent juries from taking this fact into consideration, and as they know that a great railway company can pay any sum they name, they are usually very generous to injured persons at the expense of the companies. The Court of Appeal will not interfere with a verdict on the ground that the damages are too large or too small, except in a very extreme case, where the damages are so grossly excessive or so absurdly small as to show either that the jury did not understand the question, or that they were influenced by improper motives, such as a desire to punish the defendant.

The fact that the injured person was insured against accidents and therefore entitled to receive a sum of money from an insurance company in respect of his injuries, must not be taken into account in assessing the damages payable by the railway company (a).

A railway accident which causes bodily injury to a person often causes also very serious nervous and mental injury. Such nervous shock, though often exaggerated in actions against railway companies, is a very real injury, the natural result of the accident, and a proper element, therefore, to be considered in assessing damages.

(z) See *Phillips v. L. & S. W. Ry. Co.* (1879), 5 C. P. D. 280.

(a) *Bradburn v. G. W. Ry. Co.* (1874), L. R. 10 Ex. 1.

It has, however, been very much doubted whether damages are recoverable where an accident happens which does not cause any physical injury to a plaintiff, but only nervous or mental injury from fright. In *Victorian Railway Commissioners v. Coultas* (b) a party of persons driving home by night had to cross a railway by a level crossing. The man in charge opened one gate and allowed them to drive on to the line, but before he could open the other gate an express train was seen rapidly approaching at a very short distance. The occupants of the carriage had an extraordinarily narrow escape, as the train passed close to the vehicle but did not actually touch any person. The plaintiff, however, was so terrified by seeing the train rushing upon her, and thinking she was about to be killed, that she became seriously ill, and sued the railway authorities for damages. On appeal from the Australian Courts the Privy Council held that the plaintiff could not recover, as damages arising from mere sudden terror, not accompanied by any actual physical injury, are too remote, and not the natural and reasonable result of the negligent act. A decision of the Privy Council, however, is not binding on the Courts of the United Kingdom, and the judges in England and Ireland have definitely refused to follow this case. In *Dulieu v. White* (c) the King's Bench Division, in England, held that where nervous shock is caused to a person by an act of negligence which gives rise to a reasonable fear of immediate personal injury, damages may be recovered although no actual impact occurred. Again, in *Bell v. Great Northern Ry. Co. of Ireland* (d), the plaintiff was a passenger on the railway of the defendant company in an excursion train. The train was too heavy for the engine to draw it up an incline, and accordingly the company's servants divided it, the carriage in which the plaintiff was being the last carriage in that part of the train remaining attached to the engine.

(b) (1888), 13 App. Cas. 222.

(c) [1901] 2 K. B. 669.

(d) (1890), 26 L. R. Ir. 428.

The hinder part of the train then ran down the incline with great velocity, and after a short interval the other part followed it. The travellers were very much alarmed, and some jumped out. The train, however, was pulled up suddenly with a jerk, and further mischief was avoided. The plaintiff was not physically injured, but was so terrified that she became seriously ill and unable to perform her ordinary avocations. She sued the company for damages, and at the trial medical evidence was given to the effect that she was suffering from fright and nervous shock, and that her condition might result in paralysis. The judge told the jury that if great fright was, in their opinion, a reasonable and natural consequence of the circumstances in which the company had placed the plaintiff, and if she was actually put in great fright by these circumstances, and if injury to her health was, in their opinion, a reasonable and natural consequence of such great fright, and was actually occasioned thereby, damages for such injury could not be too remote, and might be given therefor if they found for the plaintiff. The jury found for the plaintiff with 300*l.* damages. On appeal, it was held that the judge had correctly stated the law to the jury and that the verdict should stand.

By several Acts of Parliament the Board of Trade were given powers to order railway companies to do things for the purpose of securing public safety (*e*). These powers are now exercised by the Minister of Transport (*f*). Where personal injury can be proved to have resulted from the failure of a company to comply with any such order the liability of the company can hardly be disputed.

(*e*) E.g. the Regulation of Railways Act, 1889, s. 1, confers such powers in relation to brakes, signals, etc.

(*f*) Ministry of Transport Act, 1919, and Order in Council. See p. 220, *post*.

CHAPTER X.

EXTENT OF LIABILITY.

As has been seen, railway companies, although not insurers of the safety of their passengers, are bound to use a very high degree of care in carrying them. A person, as a general rule, becomes a passenger by making an express contract with the company by purchasing a ticket. The contract is to use all reasonable care and diligence to carry safely to a destination named; and, therefore, if the company be guilty of any negligence in the carrying, the company commit a breach of the contract. The obligation to use care, however, exists quite independently of any contract (*a*), and a person may be a passenger who has not made any express contract with the company.

In *Great Northern Ry. Co. v. Harrison* (*b*) the plaintiff was a reporter on the staff of a London sporting newspaper. The defendant railway company were in the habit of allowing reporters of this paper to travel free by their railway to races held at places on the line. The reporter on such occasions was supplied with a ticket which bore a statement on the face of it that it was not transferable, and that any person, other than the person named on the ticket, who used it would be liable to the penalties which a person incurs who travels without having paid his fare. The plaintiff, on the occasion in question, used such a ticket, but it bore not his name, but the name of another reporter on the same staff. The train in which he was travelling met with an accident through the negligence of the company's servants, and the plaintiff was seriously injured and brought this action to recover

(*a*) See *Foulkes v. M. District Ry. Co.* (1880), 5 C. P. D. 157.

(*b*) (1854), 10 Exch. 376.

damages. The company's defence was that the plaintiff was unlawfully in their train, and they were therefore under no liability to him. It was proved, however, that it was a frequent occurrence for one of these reporters to travel with a ticket which was marked with the name of some other member of the same staff, and that the reporters were personally known to some of the company's servants. It was held that there was evidence that the irregular use of the tickets was permitted by the company, and that, in these circumstances, the plaintiff could not be considered a trespasser and was entitled to succeed. In another case it was held that a post-office servant travelling with the mails was entitled to recover damages from the railway company for personal injuries suffered by him from the negligence of the company (c). In *Austin v. Great Western Ry. Co.* (d) the plaintiff was a child of three years and two months old, whose leg was broken in an accident to a train caused by the negligence of the servants of the defendant company, and who, in consequence, sued for damages. The child's mother, carrying him in her arms, had taken a ticket for herself, but not for him, and had then taken him with her by the train in which he was injured. The defence was, that as the plaintiff was over three years of age (the age below which children are allowed to travel free) he was not entitled to be in the train without having a ticket taken for him, and that therefore the company were not liable. The jury, however, found that there was no intention on the part of the mother to defraud, as the servants of the company saw the child and asked no questions as to his age, nor told the mother she ought to take a ticket for him at half-price; and a verdict for the plaintiff was given. The Court held that the verdict was right. Blackburn, J., said: "The right which a passenger by railway has to be carried safely does not depend on his having made a contract, but the fact of his being a pas-

(c) *Collett v. L. & N. W. Ry. Co.* (1851), 20 L. J. Q. B. 411.

(d) (1867), L. R. 2 Q. B. 442.

senger casts a duty on the company to carry him safely. If there had been fraud on the part of the plaintiff, or if the plaintiff had been taken into the train without the defendants' authority, no such duty would arise. We must take it that the child, without fault, and through an honest mistake on the mother's part, was taken into the train by the railway company and received as a passenger by their servants with their authority. Under those circumstances, does or does not the law require those who were carrying the child to take reasonable care that he should come to no damage? It certainly seems to me that a duty to carry safely arises under those circumstances." It appears, therefore, that every person who is travelling upon a railway without any intent to defraud, even though he has not actually taken a ticket, is a "passenger," and the company, upon whose line he is travelling, is responsible to him for injuries caused by their negligence. It is a very common thing for a person who arrives late at a station to enter a train without taking a ticket, because he has not time to take one, but with the intention of paying at the other end of his journey; such person is undoubtedly a passenger.

But the high degree of care which railway companies are bound to exercise towards their passengers is not, by any means, limited to passengers. Many persons come on to the premises of railway companies without any intention of travelling, but for some definite purpose in relation to the business of the company. Thus a person may enter a station to send off a parcel, or to inquire as to trains with a view of travelling on a future occasion. Again, there is the common practice of persons going to railway stations for the purpose of "seeing off" their friends. Sometimes, in the cases of old or feeble or very young passengers, it is necessary for some person to superintend their departure. At other times it is a mere matter of sentiment or politeness. In any case, however, these persons are on the premises by the permission, if not by the actual invitation, of the company.

Attempts have been made (with little success) to show that the liability of the companies towards such persons is of a less degree than towards passengers. In theory, perhaps, there is some difference in the degree of liability, but in practice it cannot be said that the difference is of any value to the companies. Thus, in *Watkins v. Great Western Ry. Co. (e)*, the plaintiff accompanied her daughter, a girl of seventeen, to one of the defendant company's stations, to see her off upon a journey. She purchased a ticket for her daughter and then proceeded along with her across a footbridge which gave access to the platform from which the train was to start. A porter had placed a plank across the bridge, resting on the two parapets, in order to clean a lamp. Against this plank, although it was broad daylight at the time, the plaintiff knocked her head and was injured. In the action she brought for damages against the company, a jury gave her a verdict, but a new trial was ordered. Denman, J., said that there was no evidence of negligence on the part of the company, as the plaintiff must have seen the plank if she had taken the ordinary precaution of looking where she was going. In dealing, however, with the degree of responsibility of the company, the judge said: "I regard the passenger's friend so permitted to go along the bridge by constant acquiescence on the part of the railway company as not being in the nature of a person barely licensed to be there, but as being invited to go to the same extent as the passenger whom he accompanies, and is there on lawful business in which the passenger and the company have both an interest." In *Thatcher v. Great Western Ry. Co. (f)* the plaintiff went to a station of the defendants to take tickets for two ladies, and to see them off by train. Having said good-bye, he moved off from the carriage in which the two ladies had taken their seats and entered into conversation with another lady on the platform. The train started in the usual way, all the doors being shut

(e) (1877), 37 L. T. 193.

(f) (1893), 10 T. L. R. 13.

except that of the guard's van. The door of this van struck the plaintiff, his leg slipped between the train and the platform, and his thigh was broken. In an action for damages he got a verdict for 535*l*. The Court of Appeal refused to disturb the verdict. Lord Esher, M. R., said that it was a matter of everyday occurrence that when persons intending to be passengers came to railway stations, their friends came with them to see them off. The company knew that it was the practice of passengers' friends so to come to their stations, and they permitted them to come. They knew that whenever two persons came to a station it might well be that one of them was not intending to travel, but merely came to see the other off. What duty had the railway company to those persons? No doubt in strict logic they had not the same amount of duty to them as they had to persons who paid them money in consideration of being carried as passengers. But, so far as regarded the taking of means for providing for personal safety, it was impossible to measure the difference between their duty to the one class of persons and their duty to the other. In short, it was their duty to take reasonable care with regard to both. The defendants, therefore, owed the plaintiff the duty to take reasonable care not to do anything to endanger his personal safety (*g*). In another case (*h*), A. L. Smith, L. J., said: "It is clear that a person lawfully upon railway premises may maintain an action against a railway company for injuries sustained whilst there by reason of the active negligence of the company's servants, whether he has a contract with the company or not; and he need not allege or prove any contract at all; he need only allege and prove that he was lawfully where he was, and was then injured by the active negligence of the company's servants, for this is sufficient to prove a breach of that duty on the part of the defendants which is implied by law."

(*g*) See *Toal v. N. B. Ry. Co.*, [1908] A. C. 352; and *Tough v. N. B. Ry. Co.* (1914), S. C. 291.

(*h*) *Taylor v. M. S. & L. Ry. Co.*, [1895] 1 Q. B. 134.

But where a person, even though he is at a station on business, goes to a part of the premises to which he is not either expressly or impliedly invited to go and to which the company have no reason to expect him to go, he is a trespasser and the company are not responsible if he is injured by negligence in that place (i).

With regard, however, to a person who is merely a "bare licensee," or, in other words, who comes on to the premises of a railway company with the express or implied consent of the company entirely for his own purposes, and not in any sense in connection with the business of the company, the law is different. It is well known that persons constantly enter railway stations in order to use the lavatories, or to buy a paper at the bookstall, or for some other purpose in which the company have no interest whatever. These persons are on the company's premises only because the company do not choose to warn them off. Towards such persons the company are under no duty to exercise care to have the premises in a safe condition; but still, if they choose to allow such persons to come on to the premises they must warn them of any concealed source of danger which is known to them, but not apparent to a person who exercises ordinary care.

A danger may be apparent to an adult which is not apparent to a child, and a company may therefore be liable for injury to a child who comes on to their premises, where they would not be liable for injury to an adult in like circumstances. Thus, in *Cooke v. Midland Great Western Railway of Ireland* (k), the defendant company had a turntable close to a public road. It was not used, and was left unlocked and practically unfenced. It thus became the common plaything of the children of the neighbourhood, and the company took no steps to keep them off their premises. A child of four years of age, while playing with others on the turntable, was seriously

(i) *Griffiths v. L. & N. W. Ry. Co.* (1866), 14 L. T. 797.

(k) [1909] A. C. 229. See also *ante*, p. 146

injured, and brought an action for damages against the company. The House of Lords held that there was evidence of negligence to support a verdict against the company.

In this case the failure of the company to warn the children off their premises was regarded as an implied "licence" or permission to them to be on the premises. Such a view, however, would probably not be held in similar circumstances where adults were concerned. An insufficient warning is useless, but what may be an effective warning in the case of adults may not be an effective warning in the case of children. For example, if a company were content merely to post a notice forbidding persons to go on to a certain part of their premises, such a warning might well be sufficient to negative any implication of licence to adults, but it would hardly be a sufficient warning to children. But when children in defiance of warning go where they know they are forbidden to go, they are trespassers and the law is the same for them as for older persons. Thus, in *Hardy v. Central London Ry. Co.* (1) there was an escalator giving access to the electric trains at the Liverpool Street Tube Station of the defendant company. The escalator was reached through a booking hall which was open to the street, and was a powerful attraction to the children of the neighbourhood. Not only did the booking clerks constantly drive them out, but a policeman went through the hall about every half hour and cleared it of children. However, as soon as ever the coast was clear they used to return, prepared to run any risk to win a ride down and up the wonderful moving staircase. While playing this game a very young child, in charge of an older child, was seriously injured and subsequently brought an action against the company for damages. It was held, however, that the injured child was a trespasser and that the company were not liable.

Again, if a company permitted a person to use a footbridge for his own purposes, and the footbridge was unsafe

(1) [1920] 3 K. B. 459.

to the knowledge of the company, though there was nothing to show an ordinary observer that it was unsafe, the company would probably be liable in damages if the person using the bridge fell through and was hurt (*m*). If, however, the company did not know that the bridge was unsafe, they probably would not be liable to such a person (*n*). They are not bound to see that persons not invited to their premises do not go into dangerous places, or to warn them against dangers which are not concealed. In *Batchelor v. Fortescue* (*o*) the defendant was a contractor whose men were engaged in excavating earth for the foundations of a building. The work was being carried on by means of a steam crane, which hoisted up an iron tub full of earth, and conveyed it to a cart. A man who had nothing whatever to do with the work, idly went to watch the operations, and stood in a spot over which the tub passed. The chain which carried the tub broke, and the tub fell upon him and killed him. It was held, in an action for damages brought by the man's widow, that the defendant was not liable, as the deceased was a bare licensee, and that the defendant was under no duty to take reasonable care for his safety. To even a bare licensee, however, a company would be liable for injuries caused by active negligence, as, for example, where a porter injured such a person by negligently wheeling a truck (*p*).

If a person is wrongfully on the train or premises of a railway company, there is no duty upon the company to warn him of even concealed dangers. He comes entirely at his own risk, and, though nothing may be done with the intention of injuring even a criminal (as by setting a man-trap to catch a thief), the company is under no obligation for negligence to a trespasser. Thus, where a person who was neither a passenger nor a servant of the company got on to an empty train which was being

(*m*) See *Gautret v. Egerton* (1867), 16 L. T. 17.

(*n*) See *Brackley v. Mid. Ry. Co.* (1916), 85 L. J. K. B. 1596.

(*o*) (1883), 11 Q. B. D. 474.

(*p*) *Tebbutt v. Bristol and Exeter Ry. Co.* (1870), L. R. 6 Q. B. 73.

shunted in order to get a lift on his way home, and the train was in collision through the negligence of the company's servants and the person was injured, it was held that the company were not liable (q). So, if a person were in a train with the fraudulent intention of travelling without paying, the company would probably not be responsible if that person were injured by negligence (r). Again, a person trespassing on the line could not make the company answerable for injuries received while so trespassing.

As a general rule, a person can only recover damages against a railway company for injuries done to himself. There are, however, cases in which he may sue in respect of injuries done to another. Thus, a man may recover damages for injuries to his wife caused by negligence. He may also recover damages for the loss of the services of his servant, where such loss is due to injuries caused by the negligence of a railway company (s). A son or a daughter may be a servant, if he or she renders service to a parent. This right of the master, or of the husband, is one which exists quite independently of the right of the injured person to recover damages. It has been held (t) that where a servant is killed, a master has no right of action for loss of services; but the correctness of this decision is open to doubt. If, then, a son or a daughter be a servant by contract with the parent, the parent has no right of action for damages for the loss of those services by death; but if the services be rendered not under contract but by reason of relationship, the parent may recover under the Act about to be mentioned (u).

At one time, if a person were killed by the wrongful

(q) *Grand Trunk Ry. Co. v. Barnett* (1911), 104 L. T. 362.

(r) Per Blackburn, J., in *Austin v. G. W. Ry. Co.* (1867), L. R. 2 Q. B. 442.

(s) *Berringer v. G. E. Ry. Co.* (1879), 4 C. P. D. 163. Note—*Alton v. Midland Ry. Co.* (1865) (34 L. J. C. P. 292) is no authority to the contrary, as has been supposed. See per A. L. Smith, L. J., in *Taylor v. M. S. & L. Ry. Co.*, [1895] 1 Q. B. 140.

(t) *Osborn v. Gillett* (1873), L. R. 8 Ex. 88.

(u) *Sykes v. N. E. Ry. Co.* (1875), 44 L. J. C. P. 191.

act of another, his right of action died with him. So that, if a man were seriously injured by the negligence of a railway company, and died before he could bring an action, the company escaped liability; though, if the man had lived long enough to sue, they might have had to pay very heavy damages. This, of course, was a lamentable state of the law from the point of view of the widow and orphans and other dependants of a man killed in a railway accident. Therefore, for the benefit of such persons, the Fatal Accidents Act, 1846, which is known as Lord Campbell's Act (x), was passed. This provides that "whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony." Every such action shall be for the benefit of the wife, husband, parent and child of the deceased person. The word "parent" includes a grand-parent and a step-parent; and the word "child" includes a grand-child and a step-child; and it has been held (y) to include also a child not born at the time of the fatal accident to its father. If the deceased left no such relations as those mentioned, no action can, as a rule, be brought. Hence, brothers and sisters derive no advantage from the Act, even though they may have been absolutely dependent upon the deceased. The jury may give such damages as they may think proportioned to the injury resulting from the death to the parties affected, and it is their duty to decide in what shares the damages shall be divided amongst those persons. The persons for whose

(x) 9 & 10 Vict. c. 93.

(y) *The George and Richard* (1871), 24 L. T. 717.

benefit the action is brought must have suffered some pecuniary loss by the death. This includes the loss of the reasonable probability of pecuniary benefit from the deceased if the deceased had lived (z). In *Hetherington v. North Eastern Ry. Co.* (a) a father sued under the Act in respect of the death of his son, who was killed in an accident on the defendants' railway. It was contended, on behalf of the company, that the plaintiff was not entitled to recover anything, as the deceased did not support his father and the father had suffered no pecuniary loss by his death. The evidence, however, was to the effect that the plaintiff was nearly blind, and had suffered injuries to his legs and hands; he was able to work, but not so well as he had been, and when out of work the deceased helped him, but he had had no help from him for over five years. It was held that there was sufficient evidence to go to the jury of pecuniary loss to the plaintiff from his son's death. The right of action is limited to material loss, and nothing can be recovered for mental suffering or injury to the feelings. In most cases the damages which are claimed are for the loss of actual support by a widow and children through the death of the bread-winner of the family.

Where an action is brought under the Act on behalf of the relations of a deceased, the fact that the deceased was insured, and, therefore, money was paid or payable on his death, must not be taken into account in assessing the damages (b).

An action under the Act must be commenced within twelve months of the death. It is brought in the name of the executor or administrator of the deceased for the benefit of those entitled to benefit. If there is no executor or administrator, or if there is an executor or administrator but no action is brought within six months of the death,

(z) *Pym v. G. N. Ry. Co.* (1861), 4 B. & S. 396.

(a) (1882), 9 Q. B. D. 160.

(b) The Fatal Accidents (Damages) Act, 1908 (8 Edw. 7, c. 7).

then the action may be brought by the persons themselves who are entitled to benefit (c).

If in his lifetime the deceased has done anything that would have prevented him from suing, no action can be brought after his death. Thus, if an injured man accept compensation for his injuries in full satisfaction of his claim, and afterwards die, no action can be brought (d). Also, if the deceased had contributed to his death by his own negligence, the defendants in an action under the Act would be entitled to rely on the defence of contributory negligence as fully as if the deceased were himself suing in respect of the negligence complained of (e).

A person may, by his contract with a railway company, deprive himself of the right to hold the company responsible in case he suffers injury from their negligence. But a railway company is not entitled to impose upon a passenger any condition limiting their liability for his safety, unless the passenger has the option of travelling for a higher fare without the condition (f). If a company contend that a passenger was carried under a condition exonerating the company from liability in case of injury, it is necessary for the company to prove that such condition was brought to the knowledge of the passenger. In *Gallin v. London and North Western Ry. Co.* (g) the plaintiff was a drover in charge of a consignment of cattle which was being forwarded by the defendants' railway. He was allowed to travel with the cattle free of charge, upon condition that he travelled at his own risk. He knew of this condition. He was injured, and brought an action for damages for negligence. It was held that by his contract he had exempted the company from liability for negligence, and that he could not recover (h).

(c) 27 & 28 Vict. c. 95.

(d) *Read v. G. E. Ry. Co.* (1868), L. R. 3 Q. B. 555.

(e) *Pym v. G. N. Ry. Co.* (1861), 4 B. & S. 396.

(f) *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858.

(g) (1875), L. R. 10 Q. B. 212.

(h) As to such contracts see *Grand Trunk Ry. Co. of Canada v. Robinson*, [1915] A. C. 740.

In granting through tickets to places on the lines of other companies, it is usual for companies, by the conditions on which such tickets are issued, to limit their liability for negligence to the acts and omissions of their own servants. Such conditions are doubtless valid when sufficiently brought to the notice of a passenger. Companies seldom attempt to make any conditions exempting them from liability in respect of accidents on their own lines. There are, however, exceptions to this, especially in the case of persons travelling with live stock. It is obvious that such persons run much greater risks than do ordinary passengers. It is most important, therefore, in carrying drovers with cattle, for companies to protect themselves from liability by proper conditions, and to secure that no question shall be raised as to whether or not the conditions were brought to the knowledge of an injured drover. These objects are usually attained by obliging the consignor of the cattle to sign a certificate that the person named as drover is in *bonâ fide* charge of the consignment, and then requiring the drover to sign the condition that the company shall not be liable in case he loses his life or suffers injury from any cause whatever in consideration of his being permitted to travel with the cattle.

Such certificate and condition are usually endorsed on the consignment note referring to the live stock.

Railway companies also limit their liability in respect of persons travelling with workmen's tickets. Workmen are now carried at extremely low rates, and it is only reasonable that when a man is carried at such a rate, the company should in some degree limit their liability in case of accident. This may be done by making it a condition of the contract that in case of a claim for injuries being substantiated against the company, their liability shall not exceed a certain sum. No workman who objects to accepting such condition is under any necessity of accepting it; he has only to pay for an ordinary ticket, and the company will carry him with full liability. If it

can be shown that such a condition was sufficiently brought home to the knowledge of the passenger, there can be no doubt that it is binding upon him, and that, whatever may be the nature of his injuries, he cannot recover more than the sum named. There may, however, in practice often be some difficulty in proving that the condition was brought to the knowledge of an injured man. Hence, most of the companies have, by their private Acts of Parliament, acquired statutory protections limiting their liability, thus avoiding any possible difficulty as to knowledge. For example, by sect. 12 of the Metropolitan District Railway Act, 1893, it is provided in respect of any passenger travelling with a ticket marked "Workman's Ticket," at the low rates mentioned, that "the liability of the company under any claim for compensation for injury to person or otherwise shall be limited to a sum not exceeding 100*l.*, and this whether the ticket be issued by the company or by any company having arrangements for booking over the company's railways, and whether the claim for compensation arose on the railway of the company or of such other company."

A contract made by a person with a company exempting the company from liability, or limiting the liability, in case of negligence, is binding. But this assumes that the person contracting is of age to bind himself. By the common law an "infant," that is, a person under the age of twenty-one years, cannot bind himself by a contract which is not for his benefit. Thus, in *Flower v. London and North Western Ry. Co.* (i), the plaintiff was a boy about fourteen years of age, who was employed at a colliery. By arrangement with the owner of this colliery the company ran trains from a certain place, where most of the miners lived, to the colliery, the owner paying the company according to the number of men carried, and the men receiving free passes. Except by train there was no practical mode of access to the colliery. Each miner who used the railway signed an agreement with

(i) [1894] 2 Q. B. 65.

the railway company that, in consideration of being permitted to travel to and from the colliery, neither he, nor his representatives, nor relatives, should have any claim against the company by reason of any accident, injury, or loss to him or his property, occasioned by the negligence of the company or their servants. The plaintiff, who had signed this contract, was seriously injured by the negligence of the company's servants. He sued the company for damages, and got a verdict and judgment for 175*l*. For the company, it was contended on appeal that the judgment could not stand because of the contract the plaintiff had signed ; but the Court held that the agreement was so much to the detriment of the plaintiff as to be unfair and unreasonable to him as an infant, and therefore not binding upon him. The judgment was accordingly affirmed. Adults, however, must judge for themselves what is fair and reasonable, and are, as a rule, bound by any contracts they make with their eyes open, however foolish such contracts may be.

It frequently happens that the interests of more than one company are involved in an accident causing personal injuries. Every railway company issues through tickets for journeys partly on their own lines and partly on the lines of other companies. Companies also are granted powers by Parliament of running their trains over the lines of other companies, and of using the stations of other companies. It often happens, therefore, that a person is injured by the negligence of a person who is not a servant of the company which contracted to carry him, but of another company. In such cases questions arise as to the respective liabilities of the companies concerned.

In the first place, it may be stated that when a company, by issuing a ticket from A. to B., contracts to carry a person from A. to B., the contracting company undertakes that he shall be carried all the way to B. with care ; and, whether B. is on the contracting company's line or not, and whether the contracting company run their own

trains to B. or not, they are liable to the passenger if he is injured through the negligence of any person having any duty towards any train by which his contract entitles him to travel. "A railway company issuing a ticket to a passenger for a journey partly on the company's own line and partly on the line of another company, may be, and presumably is, responsible for the safety of the passenger on his whole journey, and is liable to compensate him for injuries caused to him by the negligence of railway servants or defective construction of carriages or stations, to whichever company they belong" (*k*). A contracting company may, however, and generally does, by the conditions on which tickets are issued, limit their liability for negligence to their own trains and their own railways. If such conditions are brought to the notice of the passenger, so as to become in law part of the contract, they will be binding (*l*). Thus, in *Burke v. South Eastern Ry. Co.* (*m*), the plaintiff took a return ticket from London to Paris. The ticket was in the form of a small book of eight leaves, which were to be detached and given up at various stages of the journey. On the cover were printed the following words:—"Each company incurs no responsibility of any kind beyond what arises in connection with its own trains and boats, in consequence of passengers being 'booked' to travel over the railways of other companies." The plaintiff, while travelling under this ticket on a railway in France, was injured through the negligence of the servants of the French company. He brought an action for damages against the defendants, who had issued the ticket; and, at the trial, swore that he had not read and did not know of the condition on the ticket. It was held, however, that the ticket formed the contract, and the contract protected the company from liability; and that the fact that the plaintiff had not

(*k*) Thesiger, L. J., in *Foulkes v. M. Dist. Ry. Co.* (1880), 5 C. P. D. at p. 168.

(*l*) As to when the conditions of a contract are sufficiently brought to the notice of a passenger to be binding, see *post*, pp. 192 *et seq.*

(*m*) (1879), 5 C. P. D. 1.

read the condition was immaterial, as it was not concealed from him, and he could have read it if he had chosen.

Unless protected by contract, however, the company issuing a ticket becomes responsible for the whole journey covered by the ticket, and may have to pay damages for the negligence of a servant of another company. But the company whose servant is guilty of the negligence does not escape liability, for, as we have already seen, every company is liable for injuries caused by the negligence of their servant to any passenger independently of contract. Hence an injured person may often have the right to choose which of two companies he will sue, or to sue both.

In *Thomas v. Rhymney Ry. Co.* (n) the plaintiff took a ticket of the defendants from Caerphilly to Cardiff. As far as Llandaff, a station between these two places, the defendants ran over their own railway. From Llandaff they ran their trains to Cardiff over the railway of the Taff Vale Railway Company. An accident happened to the train of the defendants by which plaintiff was travelling between Llandaff and Cardiff, entirely because of the negligence of the servants of the Taff Vale Company. The plaintiff was injured in the accident and sued the defendants, the contracting company. He obtained a verdict for 450*l.* damages, and on appeal it was held that the verdict was good. Kelly, C. B., said: "Where a railway company issues a ticket for a journey in the course of which the train which conveys the passenger has to pass along a portion of a line of railway belonging to another company (whether it be under running powers, or whether it be under any particular contract for a participation in profits or otherwise), the contract between the railway company and the traveller to whom such ticket is issued is, upon every principle of the law, a contract not only that they will not themselves be guilty of any negligence, but that the passenger shall be carried with due and reasonable care along the whole

(n) (1871), L. R. 6 Q. B. 266.

line from one end of the journey to the other. I am of opinion, upon every principle of law, justice and reason, when a ticket is issued, say, for example, at Euston Square Station for the conveyance of a passenger to Edinburgh, or still further north, where the traveller may in the course of his journey have to pass over several lines of railway belonging to different companies, that the contract which was entered into by the company that issues the ticket is a contract that reasonable care shall be exercised by all by whom exercise of care is necessary for the reasonably safe conveyance of the passenger from one end of the journey to the other." And the judge went on to state that in undertaking to carry to a place on another company's line, the contracting company contract for the whole journey, notwithstanding that they perform part of their contract by arrangements with other parties.

In *Buxton v. North Eastern Ry. Co.* (o) the plaintiff took a through ticket from York on the defendants' railway to Tamworth on the Midland Company's line, *via* Derby. While in a Midland train, on the Midland line, he was injured through the derailling of the train by coming into collision with a bullock. He brought this action for damages against the defendants, the contracting company. They contended that they were not liable, as the Midland Company were under an obligation to properly fence their line, which they had not done, while there was no negligence whatever on the part of the defendants. It was held, however, that the defendants were liable, because "where a railway company contracts with a passenger to carry him from one terminus to another, and on the journey the train has to pass over the line of another company, the company issuing the ticket incurs the same responsibility as that other company, over whose line the train runs and by whose default the accident happens, would incur if the contract to carry had been entered into with them."

(o) (1868), L. R. 3 Q. B. 549.

If, however, as in *Wright v. Midland Ry. Co.* (p), an accident is caused by the negligence of the servants of another company who have no duties whatever in regard to the train in which the passenger is travelling, the contracting company would not be liable, and the passenger could only successfully sue the company whose servants were in fault.

In *Self v. London, Brighton and South Coast Ry. Co.* (q) the plaintiff took a ticket from Snow Hill on the London, Chatham and Dover Railway to Peckham Rye on the defendants' railway. By arrangement with the defendant company, the London, Chatham and Dover Company ran trains over the defendants' railway into their Peckham Rye Station. The station belonged to the defendant company, but the London, Chatham and Dover Company had the exclusive use of the platform, the expense of the station staff being shared by the two companies in a certain proportion. The plaintiff travelled in a train of the London, Chatham and Dover Company, the contracting company, and on the arrival of the train at Peckham Rye he was injured by a porter negligently slamming the door of the carriage. He brought an action for damages against the defendant company. It was held that the porter was acting as the servant of the defendant company, and that they were therefore liable for his negligence. It was further stated by one of the judges that the London, Chatham and Dover Company might also have been successfully sued.

In *Foulkes v. Metropolitan District Ry. Co.* (r) the plaintiff went to the Richmond Station on the London and South Western Railway, and there took a return ticket to Hammersmith. The London and South Western Railway ran from Richmond to Hammersmith, but before reaching Hammersmith it divided into two branches, one of which ran into the Broadway Station of the defendant

(p) (1873), L. R. 8 Ex. 137; *ante*, p. 139.

(q) (1880), 42 L. T. 173.

(r) (1880), 5 C. P. D. 157.

company, the other into the Grove Road Station of the London and South Western Company. The defendant company had running powers over the London and South Western line between the Broadway Station and Richmond. On the return journey the plaintiff travelled from the Broadway Station to Richmond by a train of the defendant company, as by the regulations he was entitled to do. The carriages were adapted to the defendant company's platforms, which are nearly level with the floors of the carriages, but were not adapted to the platforms of the London and South Western Railway, which are very much lower. In getting out of the carriage at Richmond the plaintiff fell and was hurt, owing to the carriage not being suited to the platform. He accordingly brought this action for damages, charging the defendants with negligently failing to provide proper and safe carriages. The London and South Western Company had entire control over the Richmond Station, and employed all the clerks and other servants who were there employed. The ticket, therefore, was issued by a servant of the London and South Western Company. Hence it was contended on behalf of the defendant company that there was no contract with them, but only with the London and South Western Company. It was held, however, that whether there was a contract with the defendant company or not, they were liable; for they, having permitted the plaintiff to travel by their train, were bound to make provision for his safety.

CHAPTER XI.

CASES ILLUSTRATING NEGLIGENCE.

RAILWAY companies may be liable for the results of negligence in an infinite number of ways. It will probably, however, be found useful to consider examples of cases which have been brought before the Courts, and which are similar to cases which often occur.

Of course, by far the most serious accidents happen when trains collide or when a train leaves the line ; but it is seldom that in such a case the question of the liability of the railway company presents any great difficulty. Also, as we have seen (*a*), negligence is, as a rule, presumed in such cases until the contrary is proved.

Now, in the first place, it should be clearly understood that it is a question of fact for a jury to decide, in almost all cases, whether or not there was negligence. Where any reasonable evidence was given of a breach of duty on the part of the company which was the cause of the alleged accident, the Court of Appeal will refuse to interfere with the verdict of the jury finding negligence, however strongly the judges may feel that if they had been jurymen they would have decided differently. But if the evidence was not in law sufficient to prove a breach of duty causing the accident, or if the evidence was such that no reasonable and impartial men who understood it could have found the verdict which the jury found, then the Court of Appeal may set aside a verdict.

One of the first duties of a railway company is to take reasonable care that their stations and premises are in a safe condition for all persons lawfully using them. This

(*a*) *Ante*, p. 142.

is a duty which is the same in the case of a railway company as in the case of any person who invites others to come upon his premises for business purposes. The company are responsible if any person, lawfully on their premises and using them in the ordinary and customary manner with reasonable care, is injured by their default in performing this duty (b). But to establish their responsibility it is necessary to prove the absence of this reasonable care on the part of the company or their servants; and therefore they are not liable where injuries are caused on their premises by the negligence of a stranger or person over whom they have no control, or even by that of the servant of an independent contractor employed to repair a station (c).

In *Osborne v. London and North Western Ry. Co.* (d) a flight of stone steps, leading down to the platform of a station of the defendants, had become worn and hollowed, and on the morning when the accident happened they were covered with a light layer of snow, which had been trodden down and frozen over. The plaintiff was a season-ticket holder, and knew the station well, and knew that there was another flight of wooden steps which led to the platform. He chose to go down by the stone steps, however, as they were slightly the nearer, although he admitted that he thought them dangerous. He fell and was injured, and brought this action for damages. It was held that this was not a case in which the plaintiff was debarred from succeeding, on the ground that he had voluntarily incurred danger which he knew of and might have avoided; and that, as there was evidence of negligence on the part of the company in allowing the steps to become worn and in not removing the frozen snow, the verdict given for the plaintiff could not be disturbed (e).

(b) *Norman v. G. W. Ry. Co.*, [1915] 1 K. B. 584.

(c) *Welfare v. London, Brighton and South Coast Ry. Co.* (1869), 20 L. T. 743.

(d) (1888), 21 Q. B. D. 220.

(e) See *Crafter v. Metropolitan Ry. Co.* (1866), L. R. 1 C. P. 300.

In *Shepherd v. Midland Ry. Co.* (f) the plaintiff was walking up and down the platform of a country station one very cold and frosty day, waiting for his train, when his legs suddenly went from under him, and he fell heavily and was seriously injured. The cause of his fall was a strip of ice, an inch in width, extending halfway across the platform. It was supposed to have been caused by a leak from a pipe, but it was not certain how the ice came to be there. In an action against the company the plaintiff recovered a verdict for 150*l.* damages. It was held that there was evidence to go to the jury of negligence, as the company's servants in such weather ought to have seen that there was no ice on the platform, and they had had plenty of opportunity of seeing and removing the piece of ice which caused the mischief (g).

In *Paterson v. London, Tilbury and Southend Ry. Co.* (h) the plaintiff went on to the platform of a station one night intending to travel by the defendants' railway. The night was very foggy and the lamps on the platform showed very little through the fog. While walking along the platform the plaintiff fell on to the line and was injured. In an action for damages by the plaintiff against the company it was proved that several persons had fallen off the platform earlier on the same night, and the jury found that the accident had happened because of negligence on the part of the defendants. On appeal the House of Lords held that the circumstances imposed a duty upon the company to take all reasonable steps to protect the plaintiff from the danger attaching to all movement along the platform on the night in question; and that there was evidence which entitled the jury to find that the company had not discharged this duty. The plaintiff therefore succeeded in her action.

Passengers, however, in using a station must exercise ordinary care, and must keep their eyes open to see where

(f) (1872), 25 L. T. 879.

(g) See *O'Keeffe v. Corporation of Edinburgh* (1910), 48 Sc. L. R. 50.

(h) (1913), 29 T. L. R. 413.

they are going, and the mere fact that there is an obstruction on a platform is of itself no evidence of negligence. Thus, in *Cornman v. Eastern Counties Ry. Co. (i)*, the plaintiff went to a station of the defendants to fetch a parcel. He was walking along the platform, which was somewhat crowded owing to the arrival of a train, when he was pushed or stumbled against a weighing machine, and fell and broke his knee-cap. He brought this action for damages. At the trial it was proved that the machine was used for weighing passengers' luggage, and that its flat surface was six inches above the floor. It had been in the same spot for five years, and no other accident had happened, and it was broad daylight when the plaintiff fell. The jury gave the plaintiff a verdict, with 50*l.* damages; but the verdict was set aside on the ground that there was no evidence of negligence on the part of the company, as the plaintiff could have seen the machine, and if he did not see it that was his misfortune, for which the company were not to blame. In giving judgment, Martin, B., said: "If this accident had occurred in a timber-yard no jury would find negligence against the owner of it; but with these unhappy railway companies it is different, for many persons think that if an accident happens within the gates of a railway company's premises there should always be a verdict against them." This case may be compared with *Sturges v. Great Western Ry. Co. (k)*. The plaintiff was a passenger by an excursion train on the defendant company's railway. When the train arrived at its destination the passengers had to cross the line by a level crossing from the down platform to the up platform in order to leave the station. At the top of the slope leading from the level crossing to the up platform was a box enclosing levers which worked signals. This box projected about two inches above the level of the platform. There were a large number of passengers by the train, and as the plaintiff was walking along in the crowd her foot caught in this box, and she fell and

(i) (1859), 29 L. J. Ex. 94.

(k) (1892), 56 J. P. 278.

fractured her knee. At the trial of an action for damages which she brought against the company the judge held that there was no evidence of negligence to go to the jury, and directed judgment to be entered for the company. On appeal, however, the Court of Appeal held that there was evidence which should have been left to the jury; that having regard to the fact that this was an excursion train arriving with a large number of passengers, the company had not taken all reasonable care to protect the passengers from danger, and that the jury might reasonably have found that the plaintiff in the crowd had not a fair and reasonable opportunity of seeing the obstruction. On this decision the company consented to judgment being given for the plaintiff for 250*l.* damages.

In *Tooney v. London, Brighton and South Coast Ry. Co.* (l) the plaintiff was on the platform of a station of the defendants one night and asked another passenger the way to the urinal. The other passenger indicated the part of the platform where it would be found. There were two doors there, near together. One was marked "Gentlemen," and had a bright light over it; the other was marked "Lamp Room," and was not lighted. The plaintiff, who was in a hurry, pushed open the last-mentioned door and went in. He immediately fell down a flight of steps, by which the lamp room was reached from this door, and was injured. At the trial of the action which he brought against the company it was contended that they were bound to keep their station in a state of safety for everyone who lawfully used it, whether literate or illiterate. It was held, however, that there was no evidence of negligence on the part of the company, and that they were not liable.

In *Smith v. Great Eastern Ry. Co.* (m) the plaintiff, while waiting one night on a platform for a train, was attacked and severely bitten by a dog. She sued the company for damages, and it was suggested at the trial that the company were guilty of negligence in omitting

(l) (1857), 27 L. J. C. P. 39.

(m) (1866), L. R. 2 C. P. 4.

to keep the dog out of the station. It was proved, however, that the dog was a stray dog, and that no one knew to whom it belonged or how it came to be in the station. It was held that there was no evidence of negligence, as the company were not proved to have left undone anything which could reasonably have been done to prevent the mischief.

But wherever a company are aware of anything in the condition of their premises which may cause injury they are bound to take reasonable means, if such are possible, to obviate the danger. Thus in *Atherton v. London and North Western Ry. Co.* (n) the plaintiff sued for damages for injuries caused to his eye by a spark from an engine as he was leaving a station at the end of a journey. The way out of this station was a path running parallel and close to the line for about fifty yards and not in any way screened from the railway. Complaints had been made of danger from sparks to passengers using this exit, but the company had taken no action. It was held that as the company invited their passengers to use the path, and knew of the danger, and might easily and at a small cost have screened the path, there was evidence of negligence on their part.

Again, a railway company ought to take reasonable steps to control large numbers of persons coming to their stations, and must so regulate crowds that they do not unwittingly injure one another. Thus, in *Hogan v. South Eastern Ry. Co.* (o), the plaintiff, with her husband and two children, went from London to Hastings on Whit Monday by an excursion train on the defendants' railway. The company carried a very large number of persons to Hastings by excursion trains on that day. In the evening most of these persons were desirous of returning to London about the same time, and the result was that the station became densely crowded. There

(n) (1905), 21 T. L. R. 671.

(o) (1873), 28 L. T. 271. See also *Fraser v. Caledonian Ry. Co.* (1903), 5 F. 41. And compare *McCallum v. N. British Ry. Co.* (1908), S. C. 415.

were no barriers outside the station or on the platform, and no attempt was made to regulate the crowd. When the train drew up, the throng naturally swayed towards it in the desire to find seats, and in one of these movements the plaintiffs (who had a child in her arms) was swept off her feet on to the line and injured. She brought this action for damages for her injuries, and at the trial evidence was given that the state of the platform at the time of the accident was highly dangerous. It was held that in certain cases a company are bound to adopt precautions to regulate crowds, and that in this case there was evidence to go to the jury of negligence on the part of the company by omitting to take reasonable precautions.

A company are not, however, bound to guard against wilful disorder on the part of their passengers, nor to protect passengers from one another. Thus, in *Pounder v. North Eastern Ry. Co.* (p) the plaintiff was a man who had been engaged in evicting Durham miners on strike from houses belonging to their employers. In consequence he was an extremely unpopular person in that part of the country. He took a ticket from Sunderland to Hartlepool by the defendants' railway. There were a number of miners about when the plaintiff got on the platform, and accordingly he tried to get into the guard's van. He was told, however, that this was against the rules, and a seat was found for him in a carriage with several other unexceptionable passengers. At this time the company's servants knew that he was afraid of violence from the miners, but they did not know it when he took his ticket. After the plaintiff was seated six or seven of the miners pushed their way into the carriage, which was already full. The company's servants took no steps to turn them out, or to find the plaintiff another seat, but started the train. During the journey to the first station the plaintiff was assaulted by the pitmen. As soon as the train stopped this party of miners got out and another relay got in, and, between the first and second

(p) [1892] 1 Q. B. 385.

stoppages of the train, this second party assaulted the plaintiff. This procedure seems to have been followed at each station at which the train stopped, so that, as far as time would permit, each of the pitmen might have a fair opportunity of expressing his feelings towards the plaintiff. At each station he called out to the guard for assistance, but, apparently, the guard thought it wiser not to interfere. The plaintiff brought an action in the County Court against the company, and the judge decided that the company were guilty of negligence in allowing the carriage to be overcrowded, and also in not removing either the miners or the plaintiff from the carriage, and that the assaults were the consequence of this negligence. The High Court, however, held that the company were not liable, as they were not guilty of the breach of any duty they owed to the plaintiff.

In *Cobb v. Great Western Ry. Co.* (q) the plaintiff was travelling on defendants' railway from Shrewsbury to Birmingham. At Wellington, an intermediate station, a gang of sixteen men, who were apparently coming from some races, entered the carriage in which the plaintiff was seated. Before the train started again these men hustled the plaintiff and robbed him of about 90l. He called out to the station master that he had been robbed, and asked him to detain the train and have the men arrested and searched. The station master, however, refused to comply with his request, and gave the signal for the train to be started. The men, in consequence, escaped, and, though two of them were afterwards caught and convicted, the plaintiff never got his money back. He then brought this action against the company, charging them with negligence in failing to protect him and his property by starting the train without giving him the opportunity of recovering his money, which was still in the carriage when he appealed to their servant; and also charging them with negligence in permitting the carriage to be overcrowded, and so facilitating the robbing of the

(q) [1894] A. C. 419.

plaintiff. It was held by the House of Lords that the company committed no breach of their duty to the plaintiff as a passenger by starting the train when they did. If it was a duty to give opportunity for the arrest of the criminals, that was a duty to public justice, not to the plaintiff, and the plaintiff could not sue for breach of that duty. Further, although in some circumstances it may be actionable negligence to permit a carriage to be overcrowded, here there was no evidence that the robbery was the natural result of the overcrowding. In fact, it is obvious that there is no necessary connection between overcrowding and robbery. A man may be robbed if there are six persons in the compartment, or if there are sixteen, and robbery cannot be said to be the natural result of a carriage being over-full. The damages claimed, therefore, were too remote to be regarded as a consequence of the company's negligence in allowing the carriage to be overcrowded.

The subject of overcrowding is one which has seldom been brought before the superior courts; but it is clear, from the views expressed by some of the lords in this case, that it may be actionable negligence on the part of a company to permit a carriage to become over-crowded, especially where any passenger, already in the carriage before it became over-crowded, raises any objection. In bringing an action, however, founded on such negligence, it would seldom be possible to prove any damage resulting from the negligence, as mere discomfort would probably not be sufficient.

In *Jones v. Great Northern Ry. Co.* (r) the plaintiff was a first-class passenger on the defendants' railway at a time when the war was at its height. The compartment in which he travelled was arranged to seat five persons only. To his great indignation, persons with third class tickets got into the compartment until it held twelve. He brought an action against the company alleging inconvenience and discomfort and claiming 4s. 6d. damages,

(r) (1918), 34 T. L. R. 467.

the difference between the first and the third class fares. The High Court held that he was not entitled to succeed. The only duty of the company was to give such reasonable accommodation as they were able to give in the circumstances. What might be reasonable in pre-war conditions was not necessarily reasonable in war time. If the plaintiff had been able to show that there was plenty of room in the third class compartments he might have succeeded; but in the absence of such evidence and in the circumstances he was not entitled to succeed.

At many railway stations it is necessary for passengers to cross the lines from one platform to another by means of a level crossing. Where a company supply no other means of crossing, or usually permit crossing on the level, they should take all reasonable precautions to secure the safety of their passengers. An invitation by the company to use a level crossing may be implied even where a notice is posted forbidding passengers to use it, if it can be shown that the crossing was constantly used by the public without any attempt on the part of the company to enforce their notice (*s*). Persons using level crossings, however, must themselves take reasonable care, and, if they are injured, their injuries can often be proved to be due to their own contributory negligence. An example of this has already been given in the case of *Davey v. South Western Ry. Co.* (*t*). We may compare with that case *Coburn v. Great Northern Ry. Co.* (*u*). Here the only means of getting from one platform to the other at one of the company's stations was by a level crossing, over which passed a public road, with gates, in the usual manner, to close the road when trains were approaching. Owing to a curve, trains from one direction did not come in sight till about 275 yards from the station. A female passenger arrived at this station by a slow train, and in crossing to the other platform was killed by an express. The gates stopping the roads

(*s*) *Dublin, Wicklow and Wexford Ry. Co. v. Slattery* (1878). 3 A. C. 1155.

(*t*) (1883), 12 Q. B. D. 70; *ante*, p. 145.

(*u*) (1891), 8 T. L. R. 31.

were closed and carts waiting to cross, but no warning was given to the woman, nor did the train whistle. In an action by the woman's representatives, it was held that there was evidence of negligence on the part of the company, as the station was a dangerous one and no warning was given.

A common cause of complaint against a railway company is that a passenger's fingers have been squeezed in the door of the carriage by a porter slamming the door without warning. This is very often clearly negligence on the servant's part; but in many cases the injured person has only his own negligence to thank for his injuries in putting his hand in a dangerous place, and the company escape liability on the ground of contributory negligence. The result of the cases seems to be that if a person is in the act of entering or leaving a carriage when his fingers are squeezed, the company will probably be held responsible; but if the door is closed after the passenger has completely entered the carriage, the company will be exonerated. Thus, in *Fordham v. London, Brighton and South Coast Ry. Co.* (x) the plaintiff was getting into a carriage one night carrying a parcel in his right hand. The floor of the carriage was considerably above the level of the platform, and, in order to raise himself into the carriage, he caught hold of a part of the door near the hinges with his left hand. Before he got quite inside, the guard came along slamming the doors, and, by slamming the door of the carriage in question, pushed the plaintiff in and squeezed his hand between the door and the post to which the hinges were attached. In an action for damages against the company he got a verdict; and the Court held that the verdict should stand, as there was evidence of the defendants' negligence to be left to the jury.

In *Jackson v. Metropolitan Ry. Co.* (y) the plaintiff was travelling westward from the City one evening by the defendants' railway. At King's Cross the carriage in which he was riding was full. At Gower Street three

(x) (1868), 18 L. T. 566.

(y) (1877), 3 App Cas. 193.

other persons got in, but were obliged to stand. At Portland Road there were a number of persons waiting for the train. The door of the carriage was opened, and some of these persons tried to get in. The plaintiff rose from his seat to prevent them. While standing up with his arms extended the train started, and a porter, after warning the persons trying to get in to stand back, slammed the door as the train was entering the tunnel. The plaintiff, when the train started, put his hand on the lintel of the door to save himself from falling, and when the door was slammed his thumb was caught and crushed. That was the cause of action. It was held, however, by the House of Lords that there was no evidence on which the jury could find negligence on the part of the company which was the cause of the injury.

In *Drury v. North Eastern Ry. Co.* (2) the plaintiff was a passenger on the defendants' railway from Goole to Hull, and was seated near the door. At the first station at which the train stopped another passenger got out, leaving the door of the carriage open. The station master, in shutting the door, crushed the plaintiff's finger which was in the hinge. The plaintiff, in an action for damages, contended that, as no warning had been given before the door was shut, there was negligence on the part of the company. It was held, however, that there was no evidence of negligence. Lord Alverstone, C. J., said: "The only point we have to consider is whether, in the case of a passenger who is seated in a railway carriage in the course of the journey, not in the act either of entering the train or alighting from it, there is evidence of negligence against the railway company, because the shutting of the carriage door by a servant on the platform jams the passenger's finger. Speaking for myself, I should certainly say that no railway servant could be supposed to assume that a passenger's finger was placed in a dangerous position unless the passenger was in the act of getting in or out of the carriage. It is said, on behalf

of the plaintiff, that no warning was given by the station master before he shut the door ; but we cannot close our eyes to the ordinary incidents of railway travelling, and it is difficult to see what warning could be given under such circumstances ; the warning would have to be given with reference to an act which the passenger, of course, might conceivably do, but he most certainly ought not to do. Not only upon authority, but also upon grounds of common sense, I am of opinion that to hold a railway company liable for negligence, on the ground that no warning of the shutting of the carriage door was given to passengers seated inside the carriage and not in the act of getting in or out, would be to reduce the law to an absurdity ” (a).

Many accidents have happened through doors flying open. Such an accident may happen either because the door was not properly shut before the train started, or from the faulty construction or want of repair of the fastening. Where injury is caused through a door flying open, it is generally difficult for a railway company to escape responsibility. A passenger has a right to assume that the doors are properly fastened ; and it is not, as a rule, any negligence on his part to lean on the door when looking out of the window.

Thus, in *Gee v. Metropolitan Ry. Co.* (b), the plaintiff and his brother were passengers on the defendants' railway at a time long before the electrification of the underground system in London. There was a bar across the window of the compartment in which they travelled to prevent persons from putting their heads to more than a small extent out of the window. A conversation arose as to the mode of signalling, and the plaintiff was explaining the system to his brother. He said to his brother : “ If you will look out when I tell you, you will see the lights for Sloane Square.” He then stood up to look out, and took hold of the bar across the window. The door immediately flew open, and the plaintiff fell out and was

(a) See also *Benson v. Furness Ry. Co.* (1903), 88 L. T. 268.

(b) (1873), L. R. 8 Q. B. 161.

injured. In an action for damages the plaintiff got a verdict for 250*l*. On behalf of the company, it was argued that there was no evidence as to the cause of the door flying open ; that if the plaintiff had kept his seat nothing would have happened ; that the accident was caused by the voluntary act of the plaintiff ; and that he had contributed to his injuries by his own negligence. It was held, however, that the verdict should stand ; that it is the duty of a railway company before a train starts to see that the doors are securely fastened ; that here there was evidence that the duty had not been performed ; and that “ any passenger in a railway carriage, who rises for the purpose either of looking out of the window, or of dealing with, and touching, and bringing his body in contact with the door for any lawful purpose whatsoever, has a right to assume, and is justified in assuming, that the door is properly fastened ; and if by reason of its not being properly fastened his lawful act causes the door to fly open, the accident is caused by the defendants’ negligence.”

Again, in *Richards v. Great Eastern Ry.* (c) the plaintiff was a woman travelling with a child. After the train had stopped at the station at which she intended to get out, she stood up and took the child in her arms, intending to sit down again until a porter should open the door. In doing this she “ touched ” the door (according to her own statement) and fell out and was injured. In an action for damages, it was held that there was evidence of negligence proper for the consideration of the jury.

In *Adams v. Lancashire and Yorkshire Ry. Co.* (d) the plaintiff was on a very short journey in the suburbs of Liverpool, and was sitting next the door with his face to the engine. After the train started the door flew open and the plaintiff shut it. Between the first and second stations, at which the train stopped, it flew open again, and again he shut it. The same thing happened between the third and fourth stations. The door flew open a fourth

(c) (1873), 28 L. T. 711.

(d) (1869), L. R. 4 C. P. 739.

time ; and as the plaintiff was standing up, trying to fasten it, the carriage gave a lurch as the train went round a curve, and he fell out and was injured. The stations were very near together, and in about one minute the train would have stopped again. In an action for damages it was held that the company were not liable. Here the plaintiff had needlessly put himself in danger. It was quite unnecessary for him to shut the door at all. If he had left it open it would have done him no harm, especially as it was in the month of July ; and the worst he could complain of was a slight inconvenience. Therefore, although the company were guilty of negligence in allowing the fastening of the door to be out of repair, still the plaintiff had contributed to his injuries by his own negligence.

Passengers often complain of injuries caused by being thrown down by the train giving a sudden jerk as they are in the act of entering or alighting. The answer to such a complaint usually is, that the passenger was either attempting to enter or to leave the train while it was in motion. There is then, in the majority of such cases, a direct conflict of evidence with which the jury alone can deal. Thus, in *Hellawell v. London and North Western Ry. Co.* (e) the plaintiff, an elderly lady, was a traveller from Manchester to Huddersfield. On the train arriving at the latter place, several porters ran to the train before it stopped and opened the doors of the carriages, calling out, "All out for Huddersfield." The plaintiff thought the train had stopped, and put her foot on the step to alight. Just then the brake was taken off and the train, which had nearly stopped, moved on a little way with a sudden jerk. The plaintiff was thrown on the platform and her leg was broken. At the trial of the action the jury found that there was negligence on the part of the company in opening the doors while the train was moving, and that the plaintiff had not brought about her injuries by her own negligence. It was held that there was evid-

(e) (1872), 26 L. T. 557.

ence from which the jury might find negligence on the part of the company, and that the verdict for the plaintiff was good.

In *Angus v. London, Tilbury, and Southend Ry. Co.* (f), the plaintiff stood up in the carriage in which he was a passenger while the train was running at full speed. While he was so standing the brakes of the train were suddenly applied by the driver, and the train was pulled up with such a violent jerk that the plaintiff was thrown down and injured. The driver had taken this course in order to save the life of a man who was on the line. The plaintiff brought an action to recover damages for his injuries, and succeeded, though the jury were satisfied that the driver had acted properly. It was held that, as there was evidence that the man was on the line through negligence on the part of the company, there was evidence that the violent stopping of the train was due to negligence on the part of the company.

Trains often overshoot, or stop short of, the platform of a station. Sometimes, too, a train is longer than the platform. In any of these cases, when the train stops, a passenger may find that there is no platform alongside his carriage. Now, it is clearly no negligence on the part of a railway company to stop a train in a place where there is no platform. The exigencies of traffic often oblige this to be done. But if a train is stopped where there is no platform, in such circumstances that passengers may reasonably suppose that there is a platform, or that they are invited to get out, the company are bound to take precautions to warn passengers of the real state of things, and if they fail to warn them they are negligent. It is, of course, especially necessary to take precautions at night. But in most of such cases it is perfectly obvious, to any passenger using his eyes, that there is no platform alongside; and if he, seeing the risk, chooses to get out without asking for assistance or demanding that the carriage should be taken to the platform, it seems unreasonable that

he should have a remedy against the company, even though the company are negligent. The decisions on the subject seem somewhat contradictory, but this is chiefly because they are mainly decisions on questions of fact.

In *Harrold v. Great Western Ry. Co.* (g) the plaintiff arrived at a station on the defendants' railway late one evening, when it was dark and raining. The train overshoot the platform, so that some of the carriages in the front part were outside the station, on an embankment above a roadway. The plaintiff was in one of those carriages, and, seeing some of his fellow passengers getting out, he followed, although he knew the carriage was beyond the platform, and there was no light either in the carriage or outside. He did not wait to see whether the train would be backed in, nor did he ask for assistance. In getting down he missed his footing, stumbled forward, and fell over the embankment and was hurt. In an action against the company it was held that the company were not guilty of any negligence causing the injury to the plaintiff, but that he was injured through his own negligence.

In *Siner v. Great Western Ry. Co.* (h) the plaintiff was a passenger by an excursion train to Rhyl. The train was too long for the platform at Rhyl, and, in consequence, when it stopped some of the front carriages, in one of which were the plaintiff and her husband, were taken beyond the platform. The train remained stationary a few minutes. Then the man got out, and his wife followed, and, taking hold of his hands, tried to jump down. She fell and was hurt, and brought this action for damages for her injuries. It was broad daylight at the time of the accident. The passengers were not told to keep their seats, nor were they asked to get out; there was no request made to back the train, nor was it, in fact, backed. The jury found a verdict for the plaintiff, with 300l.

(g) (1866), 14 L. T. 440. See also *Anthony v. Mid. Ry. Co.* (1908), 25 T. L. R. 98.

(h) (1869), L. R. 4 Ex. 117.

damages; but the verdict was set aside on the ground that there was no evidence on which the jury could find negligence on the part of the company, and that the accident was the result of the plaintiff's own voluntary act.

In *Bridges v. North London Ry. Co.* (i) the action was brought by a widow for damages for negligence causing the death of her husband. The deceased man was travelling one evening from Broad Street to Highbury, in the last carriage on the train. Just before reaching Highbury Station the train had to pass through a tunnel. In the tunnel there was a heap of hard rubbish, and then a slope leading up to a piece of narrow platform, which was a continuation of the station platform. The train in question stopped short, the last two carriages being within the tunnel. It was a dark night, and the tunnel was full of steam, but the station was properly lighted. The carriage in which the deceased man was travelling stopped opposite the heap of rubbish. Another passenger, who was called as a witness at the trial, and who was in the last carriage but one, said that he heard the name of the station called out, and got out on to the narrow piece of platform inside the tunnel, and then heard someone shouting, "Keep your seats." The train was then moved on into the station, and the deceased was found lying on the heap of rubbish. He had received serious internal injuries, from which he died. The judge who tried the case held that there was no evidence of any negligence on the part of the company. The House of Lords, however, decided that although it was not negligent to stop the train in the tunnel, and not necessarily negligent not to have a platform in the tunnel, still, there was evidence which ought to have been submitted to the jury on the question whether the company's servants had not by their conduct induced the deceased to get out of the carriage when he did, and so, by their negligence, caused his death.

In *Rose v. North Eastern Ry. Co.* (k) the plaintiff was

(i) (1874), L. R. 7 H. L. 213.

(k) (1876), 2 Ex. D. 248.

a passenger on the defendants' railway to a place where a bazaar was being held. In consequence, the train was unusually long and full, and some of the carriages were taken past the platform. The plaintiff was in one of these, and after waiting some little time she got out, and, in so doing, fell and was injured. The servants of the company had called out to the passengers to keep their seats, but neither the plaintiff nor those in the carriage with her heard it. It was held, in an action for damages, that there was evidence of negligence to go to the jury. Cockburn, C. J., said: "The mere fact of the end of the train passing the platform, where the passenger can safely alight, is not of itself evidence of negligence, for it is impossible always to regulate the speed of the train, and sometimes the platform may not be long enough. But when this happens, it becomes the duty of the company to take measures for the safety of the passengers in the carriages beyond the platform. They are not to be exposed to unnecessary danger; the train may be backed, and, in the meantime, the passengers may be warned to keep their seats until it is backed. If, being so warned, they choose to get out and expose themselves to unnecessary danger, that is their fault, and in such circumstances the company would not be liable. But if that course is not adopted, and the train does not back, the passengers should be asked if they will alight, and the porters should assist them in getting out—such of them, at least, as may require such assistance. At all events, something should be done to prevent their incurring unnecessary danger. It is not enough that the train has come to a standstill, and the porters call out, 'Keep your seats,' unless the train is afterwards backed or something is done. If the porter did, as he said, call out 'Keep your seats,' he did not do it so as to be heard in the plaintiff's carriage, nor was he near enough for her to speak to him or for him to speak to her; and even if he did so call out, it would have been of no use, as the train was not backed, and no assistance was offered. Under these circumstances, what were the pas-

sengers to do ? Can it be said that they were to sit still and to be carried on to the next station, perhaps forty or fifty miles off, and then be liable to be called upon to pay the full fare for the whole distance, and to be exposed to various inconveniences ? Can that be seriously contended ? If the passenger is satisfied that the train is going on, and there is apparently no alternative but to get out, he must do as best he can. Of course, if he is careless in getting out and is thereby injured, it is his own fault ; but if he does his best and yet sustains injury, the company will not have done what was incumbent on them to do, and will be liable. Here the company's men did nothing to obviate inconvenience and danger."

In *Robson v. North Eastern Ry. Co.* (l) the plaintiff was a passenger in a train of the defendants to a small station, at which the train stopped with the engine and part of the front carriage beyond the platform. The plaintiff was in this carriage, and when the train stopped she opened the door and stepped on to the iron step. She stood there for some time, looking for someone to help her, and holding several parcels in her arms. No one came, and she became afraid that the train would proceed. She accordingly tried, with her back to the carriage, to get down by stepping on to the footboard. In so trying, she fell to the ground and was hurt. In an action against the company, it was held that there was evidence of negligence to go to the jury.

In no case has it been held that the mere calling out of the name of a station is an invitation to alight ; in fact, there have been many judicial opinions to the contrary. But from the last-mentioned case it appears that if a train is brought to a standstill at a station, and after a reasonable time no warning is given to passengers, they may reasonably infer that they are intended to get out, and the conduct of the company amounts to an invitation to alight. But where a person is warned to keep his seat, but deliberately chooses to run the risk of jumping out

(l) (1876), L. R. 10 Q. B. 271.

rather than wait, it is clear that the company is not liable if he is hurt.

In *Glasscock v. London, Tilbury and Southend Ry. Co.* (m) the plaintiff, a woman, was a passenger in one of the defendants' trains to a terminal station with which she was familiar. The train was too long for the platform, and stopped in such a position that the carriage in which the plaintiff was travelling was beyond the level platform and opposite a ramp or sloping part. Almost as soon as the train stopped, before the guard had left his van, she jumped out, fell, and was injured ; and subsequently she sued the company for damages for negligence. The jury found that the plaintiff could have avoided the accident by looking before she stepped down, and that she did not look. But still they found that the company were guilty of negligence and the plaintiff was not negligent, and gave her a verdict for 200*l.* damages. The company went as far as the House of Lords in attempting to upset this finding, but without success, as their Lordships held that it was entirely a question of fact for the jury, and that there was evidence of an implied invitation to the plaintiff to alight. The case is an excellent example of the extreme difficulty of avoiding the verdict of a jury in these cases.

(m) (1903), 19 T. L. R. 305.

CHAPTER XII.

THE CONTRACT WITH THE PASSENGER.

WHEN a passenger suffers personal injuries through the negligence of a railway company or their servants, the railway company have committed a breach of the contract made with the passenger to carry him with due care. We have seen, however, in a previous chapter that the company's liability for such injuries is quite independent of the existence of any contract. But in regard to other matters between the company and the passenger the contract is the ruling factor, and their relationship depends in general upon its terms. The contract is made, usually, by the purchase of a ticket. The ticket is a receipt for the fare (a) that has been paid, and also an agreement by the company to carry the passenger, with due care for his safety, from the station of issue to the station of destination named. The ticket always implies this, but it usually implies a good deal more. A contract is two-sided, and usually implies obligations on both sides. The contract which a passenger makes with a railway company by purchasing a ticket is no exception to this. It imposes obligations on the passenger as well as on the company, and some of these obligations will now be considered. There is very little on the face of a ticket to indicate that it may constitute a contract containing many conditions; but there is usually on the ticket some reference to conditions to be found elsewhere. For example, on the face of an ordinary ticket issued by the London and South Western Railway Company will be found these words: "This Ticket is

(a) As to the fares which may be charged by railway companies, see *post*, p. 241

issued subject to the Regulations and Conditions stated in the Company's Time Tables and Bills." Several companies have similar words on their tickets. Others print the words "For conditions, see back" on the face of the ticket, and refer to their regulations, bills, time tables, &c., on the back. Others, again, merely have the words "See Back" on the face of the ticket, with similar references on the back. In each of these cases, however, the company intend to incorporate in the contract made by issuing a ticket certain conditions which they publish elsewhere as applying to the contract. If the passenger has notice of such conditions he is bound by them, whether in fact he choose to read them or not. The general principle has been thus expressed: "A great number of contracts are, in the present state of society, made by the delivery by one of the contracting parties to the other of a document in a common form, stating the terms by which the person delivering it will enter into the proposed contract. Such a form constitutes the offer of the party who tenders it. If the form is accepted without objection by the person to whom it is tendered, this person is, as a general rule, bound by its contents, and his act amounts to an acceptance of the offer made to him, whether he reads the document or otherwise informs himself of its contents or not" (b). It is clear, however, that a person cannot be said to have accepted any condition unless he has notice of it. How far a passenger has notice of conditions referred to in a ticket is sometimes a question of difficulty. If he knows of the conditions, there can be no doubt that he is always bound by them. But it frequently happens that a passenger never looks at his ticket from the time he buys it till he gives it up; or, if he does look at it, he only notices that it is to the station to which he wishes to travel, and does not read it through. Such a person may say with perfect truth that he did not know anything whatever about conditions. He may be bound by them, nevertheless.

(b) *Watkins v. Rymill* (1883), 10 Q. B. D. 178.

In the first place, it seems to be established that where a condition is actually printed on the face of a ticket it is binding (c) ; but even in this case it may be a question of fact whether the condition is sufficiently brought to the notice of the passenger (d). Secondly, if there is on the face of the ticket a reference to "conditions," which are to be seen either on the back of the ticket or elsewhere, the passenger is bound by the conditions whether he reads them or not (e). In both these cases a document is put into the hands of the passenger with printing upon it. That seems to be equivalent to the servant of the company saying to the passenger, "Read that." If not (it may be asked), why is the printing there? If, then, the passenger accepts the document without objection, he must be considered to have consented to its terms. Where, however, there are only the words "See Back" on the face of a ticket, without any reference to conditions, the question is more difficult. No doubt the passenger would be bound by the conditions if he knew or believed they were referred to on the back. But it is well known that tramway and omnibus companies (if not railway companies) print advertisements on the backs of their tickets, and a person may reasonably believe that the back does not contain anything which concerns him. It then becomes a question of fact whether the railway company did what was reasonably sufficient to bring the conditions to the passenger's notice (f). And if this question is decided against the company, and it is decided also that the passenger did not know or believe that there was anything on the back of the ticket which concerned him, then the passenger will probably be held not to be bound by the conditions. Where a ticket is complete on the face of it, and contains no reference on the face to the back, or to any conditions, then, unless it can

(c) See *Zunz v. S. E. Ry. Co.* (1869), L. R. 4 Q. B. 539. See *ante*, p. 134.

(d) See *Hooper v. Furness Ry. Co.* (1907), 23 T. L. R. 451.

(e) *Harris v. G. W. Ry. Co.* (1876), 1 Q. B. D. 515.

(f) *Parker v. S. E. Ry. Co.* (1877), 2 C. P. D. 416.

be shown that the passenger was aware of conditions on the back, the passenger cannot be said to have assented to such conditions, nor is he bound by them (*g*). The conditions of an ordinary ticket are generally placarded in various parts of the railway stations, and also contained in the time tables published by the company. In the case of excursion tickets, tourist tickets and other special tickets, there are probably special conditions. These may be notified in a similar manner or in some other manner, or may be printed on the ticket itself. In any case, if a question is raised as to whether such a condition is binding on the passenger, it will be answered by showing that he knew of it, or that he must in law be considered as knowing of it from having had it brought to his notice. If it is held to be binding, then the passenger is responsible for breach of the contract, whether it is reasonable or otherwise.

In *Great Northern Ry. Co. v. Winder* (*h*) the defendant took a tourist ticket on the plaintiffs' railway from Leeds to Skegness, for which he paid 8s. There was a condition on the ticket that, if it were used for any other train or station than those named, the ticket would be forfeited and the full fare charged. The train by which the defendant travelled stopped at a station called Firsby, which is a few miles short of Skegness, and the fare to which from Leeds was 9s. The defendant got out at Firsby, and took a ticket from there to Spilsby, to which place in fact he wished to go. The price of this ticket was 4d., so that he got from Leeds to Spilsby for 8s. 4d. instead of 9s. 4d., the ordinary fare. At Firsby he did not give up the tourist ticket. The company sued the defendant for 9s., the amount of a single fare, but did not dispute that the claim should be reduced to 1s. if the defendant was entitled, on returning the excursion ticket, to be credited with the 8s. he had paid. It was held by the High Court that the company were entitled to recover in the action,

(*g*) *Henderson v. Stevenson* (1875), L. R. 2 H. L. Sc. 470.

(*h*) [1892] 2 Q. B. 595.

as the condition on the ticket was a contract binding on the defendant. If the company had insisted on their full rights in this case, they might have recovered the 9s., without giving any credit for the price of the tourist ticket. That is clearly the meaning of the condition as to the ticket being forfeited, as appears from the next case, but it must not be forgotten that English courts are not favourable to the recovery of penalties.

In *Great Northern Ry. Co. v. Palmer* (i) the defendant took a cheap week end return ticket from Peterborough to Woodhall Spa, the price of which was 4s. 6d. On the face of the ticket, in small print in the bottom corner, were the words, "See Back"; and on the back were the words: "If used for any other train or station than that named, this ticket will be forfeited and the full fare charged." The defendant travelled to Woodhall Spa, but continued in the train on to Horncastle, to which place she really wished to go. At Horncastle she tendered the outward half of her excursion ticket and the sum of 5½d., the fare from Woodhall Spa. This the collector refused. On the return journey she paid 5½d. for a single ticket from Horncastle to Woodhall Spa, and used the return half of her excursion ticket for the rest of the journey to Peterborough. The ordinary single fare from Peterborough to Woodhall Spa is 3s. 11½d., and the return fare 7s. 11d. The ordinary single fare from Peterborough to Horncastle is 4s. 5½d., and the return 8s. 11d. The company sued the defendant in the County Court, claiming to be entitled to treat the excursion ticket as forfeited, and seeking to recover the full return fare from Peterborough to Horncastle, or in the alternative the difference between that sum and the sum actually paid by the defendant. The defendant paid into Court 5½d., the sum which the collector had refused to accept when she arrived at Horncastle, but she did not appear at the trial. The company admitted that the defendant had acted in the honest belief that she was entitled to use the ticket as she had done. The County

(i) [1895] 1 Q. B. 862.

Court judge decided against the company's claim. The company appealed, but only asked the High Court for judgment for the difference between the fares, not for the full fare payable on the ticket being forfeited. The High Court held that the company were entitled to recover, as the condition formed part of the contract; that "any other station" applies equally to stations beyond the named terminus as to intermediate stations; and that the company were entitled, if they chose to treat the ticket as forfeited, to recover the full return fare. Wills, J., said: "No one can doubt that the practice of railway companies in making special contracts for carrying passengers on special terms at low fares is a great boon to the community; and if a railway company running an excursion train at cheap fares to a place within a few miles of London were bound to treat that journey as a part of a journey from the starting point to London, and were therefore only able to charge a passenger travelling on beyond the terminus of the excursion to London the extra fare between those places, this most useful practice would be put a stop to. When a passenger takes a special ticket to a named place and back at a cheap fare, the carriage of the passenger to that place and back is the only service which the railway company contracts to perform; it cannot, if the passenger goes on to another station, be treated as part of the service rendered by the company in taking him to a place to which they did not contract to carry him. In my judgment the practice is a right and reasonable one, and one which on grounds of public policy ought to be favoured." In this case, however, the point was never raised—as the defendant did not appear—whether the company had done all that was necessary to bring the conditions to the knowledge of the passenger. One of the judges stated that the words "See Back" were in very small type and in a very inconspicuous place, and that the words on the back also were in very small print; and he intimated that, if the question had been raised, he would have hesitated

long before holding that the company had done what was reasonable.

In *London and North Western Ry. Co. v. Hinchcliffe* (*k*) the defendant, intending to travel from Huddersfield to Manchester, took a ticket for Stalybridge, an intermediate station, for which he paid 1s. 6d. On the arrival of the train at Stalybridge he gave up this ticket, and, without leaving the train, expressed his intention of going on to Manchester, and tendered the sum of 7d., which is the correct fare from Stalybridge to Manchester. The difference, however, between the fares from Huddersfield to Manchester and from Stalybridge to Manchester is 9d., as there are competing lines between the two places last mentioned. The collector, therefore, refused to accept 7d. and demanded 9d., which the defendant refused to pay. He was, however, allowed to proceed, and the company sued him for the sum of 9d. He paid 7d. into Court, and contended that that was all that was due from him. Now the ticket contained words stating that it was issued subject to the rules and regulations of the railway company.

Among the general regulations and conditions of the company were the following :—

“ *Using Ticket for any other Station.*—Any passenger using or attempting to use a ticket for any other station than that for which it is available will be required to pay the difference between the sum actually paid and the fare between the stations from and to which the passenger has travelled, or, at the option of the company, the fare from the station to which he has booked to the end of his journey.”

“ Tickets must be shown to the company’s servants and delivered up to them when demanded. Parties cannot re-book at an intermediate station by the same train. No tickets will be issued after a train is in sight at an intermediate station.”

It was held by the High Court that the company were entitled to recover 9d., as the conditions formed part of the contract, and the defendant was bound by them.

In *Ashton v. Lancashire and Yorkshire Ry. Co.* (*l*) the plaintiff took a return ticket from Chorley to Manchester.

(*k*) [1903] 2 K. B. 32.

(*l*) [1904] 2 K. B. 313.

On the return journey she travelled from Manchester to Bolton by a train which did not go to Chorley, and got out at Bolton. She had a right to travel as far as Bolton by this train, if she pleased, and to change at Bolton and proceed by another train from there to Chorley. She did not, however, go on from Bolton by the next train, but wishing to pay a visit in the town proceeded to leave the station for that purpose. As she was leaving she was required to give up her return ticket ; and later in the day, when she continued her journey, she was obliged to purchase a single ticket from Bolton to Chorley at the cost of $11\frac{1}{2}d$. She then sued the company in the County Court to recover the $11\frac{1}{2}d$. as money paid under protest, and she got judgment. The company appealed. The High Court held that the plaintiff could not recover the money, as she was not entitled to break her journey at an intermediate station in the way suggested. No special conditions were referred to in this case ; the meaning of the contract was considered on broader grounds. It was decided that the contract of the company was for a definite journey, and if the plaintiff chose to terminate the contract by leaving the company's premises before the journey was complete, she had no right, at her option, to resume the contract again. In fact, the contract to carry a passenger from one place to another is one contract for a single journey, not a series of separate contracts for separate journeys. If the plaintiff's contention were sound, a person taking a ticket from London to Liverpool might break the journey at every intermediate station (*m*).

The conditions and regulations published by the companies are numerous, and they differ, to some extent, on different railways. It is not possible, therefore, to consider them in detail. It must be noticed, however, that they are binding upon the companies as well as upon passengers ; and if a railway company break their contract, as contained in their own regulations and conditions, they are responsible to the other party.

(*m*) See *Bastable v. Metcalfe*, [1906] 2 K. B. 288.

Probably some of the most important and interesting of the conditions to the public are those relating to the punctuality and the times of running of trains. Companies, as a rule, are very careful to secure that their time tables shall not be construed as binding contracts to start trains at the times advertised, and they usually completely protect themselves from damages for unpunctuality (*n*).

The condition as to time tables made by the Great Western Railway Company may be taken as an example of what most of the companies do in order to effect this object. It is as follows :—

NOTICE TO PASSENGERS.

The Published Time Tables of this Company are only intended to fix the time at which Passengers may be certain to obtain their Tickets for any journey from the various Stations, it being understood that the trains shall not start from them *before* the appointed time, but the Directors give notice that the Company do not undertake that the Trains shall start or arrive at the time specified in the Bills; nor will they be accountable for any loss, inconvenience, or injury, which may arise from delay or detention, unless upon proof that such loss, inconvenience, injury, delay, or detention arose in consequence of the wilful misconduct of the Company's Servants. The granting of Through Tickets to places off the Company's Lines is an arrangement made for the greater convenience of the public, but the Company will not hold themselves responsible for any delay, detention or other loss or injury whatsoever, arising off their Lines, or from the acts or defaults of other parties, nor for the correctness of the times over other Lines or Companies, nor for the arrival of the Company's own Trains in time for the nominally corresponding Trains of any other Company. Fares will only be accepted, and tickets issued, upon the condition that there shall be room in the Train by which the Passenger desires to travel.

The Company reserves the right to despatch Trains from Junction Stations before the arrival of other Trains shown in the Company's Time Tables as connecting Trains, should the incoming Trains through unforeseen circumstances be running late.

Hence, it will be seen that the time table is only held out as an indication of the time *before* which a train will not start, and about which time the company intend to run a train. It might well be that if a train were started before the advertised time, the company might be liable

(*n*) See *McCartan v. N. E. Ry. Co.* (1885), 54 L. J. Q. B. 441.

in an action for damages by a person who arrived in time to catch the train if it had not started too soon. Companies are, however, seldom guilty of such a breach of contract. Also, if a company were to advertise a train which did not run at all, they would probably be liable to a person who suffered by acting upon the assumption that such train would run. Thus, in *Denton v. Great Northern Ry. Co.* (o), where the defendants advertised a through train after they had notice from the other company that the connecting train had been discontinued, it was held that the plaintiff, who had started from London on the through journey on the faith of the time tables, had a good cause of action against the company.

If a passenger takes a ticket and the train is late, he can only recover compensation where the company are not protected by their conditions. For example, in the case of the Great Western Railway Company, he would have to show that the delay was in consequence of the misconduct of the company's servants. This, obviously, is generally quite impossible for any passenger to prove. A company will, however, undoubtedly be liable in an action if a breach of their own conditions causing damage can be established. Thus, some years ago, the notice as to time tables, published by the London and North Western Railway Company, contained these words: "Every attention will be paid to insure punctuality as far as it is practicable; but the directors give notice that the company do not undertake that the trains shall start and arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience or injury which may arise from delays or detention." It was held by the Court of Appeal that these words amounted to a contract to use due attention to secure punctuality, and that delay caused by negligence was a breach of that contract, for which the company might be liable (p). The notice of the London and North Western Railway

(o) (1856), 25 L. J. Q. B. 129.

(p) *Le Blanche v. L. & N. W. Ry. Co.* (1876), 1 C. P. D. 286.

Company now reads : " The directors give notice that the company do not undertake that the trains shall start or arrive at the time specified in the bills. . . . The company will not be accountable for any loss, inconvenience or injury, which may arise from delays to or detention of passengers caused by the negligence of the servants of the company, or by any other cause whatever." They have now, therefore, apparently protected themselves as fully as they can (*q*), and their promise to use every attention has disappeared.

By the wording of their notices, however, some companies are still open to an action for damages caused by delay due to negligence ; but, in practice, it is almost impossible for passengers to prove the negligence.

The notice of the Great Western Railway Company given above was considered by the High Court in the case of *Woodgate v. Great Western Ry. Co. (r)*. The plaintiff took a first class return ticket one Christmas Eve from Paddington to Bridgnorth. On the face of the ticket were the words " See Back," and on the back the words, " Issued subject to the conditions stated on the company's time bills." A large number of persons were travelling that day ; there was a fog, and also there was a block on the line caused by a collision between goods trains. The result was that the plaintiff's journey to Bridgnorth took ten hours instead of six, as advertised, and he suffered much inconvenience from having to wait a long time at a station where there was no regular refreshment room. He had also to travel part of the journey in a second class carriage. The plaintiff often travelled on the defendants' railway, and on the day in question had a copy of the time table in his possession which contained the notice referred to. He sued the company in the County Court, claiming damages for personal inconvenience, suffering, annoyance and loss of time, and got judgment for 1*l.* damages. On appeal, however, the High Court held that the conditions

(*q*) See *Driver v. L. & N. W. Ry. Co.* (1900), 16 T. L. R. 293.

(*r*) (1867), 51 L. T. 826.

on the time bills were incorporated in the plaintiff's contract with the company, that there was no evidence of wilful misconduct on the part of the company's servants, and that the company were not liable.

In *Cooke v. Midland Ry. Co.* (s) the defendant company ran a special early train, by agreement with a colliery company, for the use of miners working in the colliery. Special tickets were issued for this train which did not contain any reference to conditions. The plaintiff was a miner who one morning took one of these tickets in order to go to his day's work at the colliery. The train, however, was so late, owing to a carriage having got off the rails, that the plaintiff was unable to reach the colliery in time for his day's work, and therefore he lost a day's wages. After waiting two hours at the station he went home. He sued the company to recover his loss, and succeeded in the County Court. The Court of Appeal upheld the decision, on the ground that the company had broken their contract to run the train at a reasonable time for the miner's work, and that the loss of a day's wages was the direct consequence of the breach of contract. Here the company were protected by no conditions. *Duckworth v. Lancashire and Yorkshire Ry. Co.* (t) was a very similar case, in which the company were protected by conditions. The plaintiff was a workman who took an ordinary workman's ticket by an early train. The train was so much behind time that he arrived at his destination too late, and lost a day's wages in consequence. He sued to recover the day's wages, but failed. His ticket referred plainly to the company's conditions. These conditions were to the effect that the times of arrival or departure of trains were not guaranteed, and that the company would not, "under any circumstances, be held responsible for delay and detention however occasioned, or any consequences arising therefrom." It was held that the company were not liable, even though the delay was caused by negligence on their part, as they were protected

(s) (1892), 57 J. P. 388.

(t) (1901), 84 L. T. 774.

by the condition which formed part of the contract with plaintiff (u).

It will be seen from the foregoing cases that it is seldom that a railway company can be made responsible for inconvenience and delay caused by unpunctuality. Delay, however, is one thing, total failure to carry out the contract is quite another thing. The contract between a passenger and a railway company, made by taking an ordinary ticket, is that the passenger shall be carried to his destination within a reasonable time (x). If the train is late and he is put to inconvenience (or even loss) thereby, he probably has no remedy; but if he is not carried to his destination at all, within a reasonable time, the company have broken the chief term of the contract, and are liable in an action for damages. Thus, if a passenger takes a ticket for a place which the time tables show that he can reach the same day, and if, by reason of the train being late, he misses a connection and is unable to get to his destination at all that day, the company have broken their contract. It would be no answer on the company's part to say that they were quite ready to carry him on next day. The contract is, not to carry to the destination at some time or other, but to carry within a reasonable time. In such a case the benighted passenger would be entitled to take a carriage to his destination, if within reasonable driving distance, and could recover the cost from the company. He would also, if that were in the circumstances a reasonable course, be entitled to go to an hotel at the expense of the company (y). But he could only recover, as damages, the loss he suffered as the natural consequence of the company's breach of contract. Of course, his actual loss might be very considerable, for by failing to keep an appointment with some person he might lose a valuable contract. But, as a general rule, a passenger cannot recover damages for having missed engagements (z).

(u) See *Wilson v. Glasgow & South Western Ry. Co.* (1915), S. C. 215.

(x) See *Hurst v. G. W. Ry. Co.* (1865), 12 L. T. 634.

(y) *Hamlin v. G. N. Ry. Co.* (1856), 26 L. J. Ex. 20. (z) *Id.*

In *Hobbs v. London and South Western Ry. Co.* (a) the plaintiff took tickets for himself, his wife, and two children of five and seven years of age, from Wimbledon to Hampton Court, by the midnight train. By mistake they were directed to the wrong train, and found themselves at Esher instead of Hampton Court. They were then between four and five miles from their home, and there was no train that would take them from Esher to Hampton Court that night. It was a wet night, and they tried to get a conveyance to take them home, but failed. They then tried to get accommodation at an inn, but no one replied to their knocks. They were therefore obliged to walk home in the rain, where they arrived about three o'clock in the morning. The result of the exposure and fatigue was that the plaintiff's wife was made ill and laid up for some time. She was unable, as before, to assist the plaintiff in his business, and expenses were incurred for medical attendance. The plaintiff accordingly brought an action against the company for damages for breach of their contract to carry the party to Hampton Court. At the trial the jury found a verdict for the plaintiff, and awarded 8*l.* as damages for the inconvenience suffered by the party in being obliged to walk home, and 20*l.* in respect of the wife's illness. It was held that the plaintiff was entitled to the damages for the inconvenience caused by the breach of contract, for that was the natural result of the breach, but that the illness and its consequences were not the natural result of the breach, and therefore the damages on this head were too remote and could not be recovered.

It must be noticed, however, that this decision, that the damages for the illness were too remote, has been strongly disapproved of; and probably, if similar facts were to be again considered, the Court would hold that the medical expenses, &c., could be recovered (b).

Where the company break their contract the passenger

(a) (1875), L. R. 10 Q. B. 111.

(b) See *McMahon v. Field* (1881), per Brett, L. J., 7 Q. B. D. 591.

has the right to do for himself what the company were bound to do for him, as nearly as possible, and to recover the cost from the company. Thus, if the company have contracted to carry him to a certain place and failed to carry him there, he may hire a cab or carriage, if his destination is within a reasonable distance, and charge the expense to the company (*e*). But in such a case the passenger has no right to perform the contract for himself in an unreasonable or extravagant manner.

In *Le Blanche v. London and North Western Ry. Co.* (*d*) the plaintiff took a first-class ticket at the defendants' station at Liverpool by the 2.0 p.m. train for Scarborough, *via* Manchester, Leeds and York. The time tables of the company contained the following notices as to the train :—

Leave Liverpool	—	—	—	—	2.0 p.m.
Arrive Manchester	—	—	—	—	3.5 p.m.
Leave Manchester	—	—	—	—	3.20 p.m.
Arrive Leeds	—	—	—	—	5.0 p.m.
Leave Leeds	—	—	—	—	5.20 p.m.
Arrive York	—	—	—	—	6.5 p.m.
Arrive Scarborough	—	—	—	—	7.30 p.m.

Up to Leeds the company ran their own trains ; from Leeds to Scarborough the journey was by the North Eastern Railway. The train from Liverpool was late at every point of its route, and arrived at Leeds at 5.27 instead of at 5.0 as advertised. The North Eastern train to York had then gone, and thereupon the plaintiff had to proceed by the next train, which left Leeds at 5.55 and arrived at York at 7.0. The next train then from York to Scarborough would leave at 8.0, and was timed to arrive at Scarborough at 10.0. The plaintiff thereupon took a special train, by which he arrived at Scarborough about 8.30. He then sued the company to recover the sum of 11l. 10s., the cost of the special train. The ticket which he took duly referred to the company's regulations and conditions. These were to the usual effect that the

(c) See *Hamlin v. G. N. Ry. Co.* (1856), 26 L. J. Ex. 20.

(d) (1876), 1 C. P. D. 286.

company did not guarantee that their trains would start at the times advertised in the time bills, but contained the words, "Every attention will be paid to insure punctuality as far as it is practicable." As has been already mentioned (*e*), the Court of Appeal held that these words amounted to a contract by the company to use due attention to keep the times specified in the time tables as far as practicable, having regard to the necessary exigencies of the traffic. At the trial in the County Court it was proved to the satisfaction of the judge that there had been unreasonable delay in running the train, and that the company had not paid "attention to insure punctuality." The company had therefore broken their contract, and the judge gave judgment in favour of the plaintiff for the cost of the special train, on the principle that, "if one party does not perform his contract, the other may do so for him as near as may be, and charge him for the expense incurred in so doing." It was proved, however, that the plaintiff had no business at Scarborough, that he was only going there for pleasure, and that he would have suffered no pecuniary loss by arriving at Scarborough late. The only consequence to him of the company's breach of contract would have been the annoyance of a long wait at York. In these circumstances the Court of Appeal held that the plaintiff was not entitled to recover the cost of the special train, and was only entitled to nominal damages (suggested at 1s.) for the company's breach of contract. The Court agreed that a person with whom a contract has been broken has a right to fulfil that contract for himself as nearly as possible, but held that he must not do this unreasonably or oppressively as regards the other party, or extravagantly. They were of opinion that it was most unreasonable and oppressive for the plaintiff to have taken a special train merely to get an hour earlier to the seaside. One test as to what in the circumstances was reasonable was to consider whether the expenditure was one which any person in the position of the plaintiff

(*e*) See p. 201, *ante*.

would have been likely to incur if he had missed the train through his own fault and not through the fault of the company.

But where a passenger has an important business engagement it may be reasonable for him to take a special train in case the railway company break their contract to take him to his destination in a reasonable time ; and if such a course is reasonable, and the company are liable for breach of contract, the cost of the special train may be recovered (f). Nowadays, however, a person in this position probably hires a motor car. It is most unlikely he should attempt to take a special train.

(f) *Buckmaster v. G. E. Ry. Co.* (1870), 23 L. T. 471.

CHAPTER XIII.

BYE-LAWS AND OFFENCES.

THE law makes special provisions for enabling railway companies to maintain order upon their railways, to secure the comfort of their passengers, and to protect themselves from the innumerable frauds and impositions which are constantly being practised upon them by unscrupulous persons. These provisions are contained either in Acts of Parliament, or else in bye-laws made by the companies themselves under powers delegated to them by Parliament.

The most important statutory enactment relating to offences by passengers is sect. 5 of the Regulation of Railways Act, 1889. It is there provided that "every passenger by a railway shall, on request by an officer or servant of a railway company, either produce, and if so requested deliver up, a ticket showing that his fare is paid, or pay his fare from the place whence he started, or give the officer or servant his name and address; and in case of default shall be liable, on summary conviction, to a fine not exceeding 40s." It is to be noticed that no offence is committed under this provision unless the passenger fails in all three of the courses open to him. Thus, if he cannot, or will not, produce or deliver up his ticket, he may pay the fare from the place whence he started, and then he has committed no offence against this provision; or he may refuse either to produce his ticket or to pay, but may be willing to give his name and address, in which case also he has committed no offence. If he refuses to do any of the things mentioned, then any officer of the company or any constable may detain him until he can be charged before a magistrate. Where a person,

who will not produce a ticket or pay, clearly refuses his name or address the company are within their rights in detaining him. If, however, he gives a name and address which the servants of the company believe to be false, they are in a position of some difficulty. To give a false name or address is equivalent to refusing to give his name and address. So, if the name or address given is, in fact, false, the detention of the person is justifiable; but the company detain the person at their risk, for if the name and address turn out to be correct they have acted illegally and are liable to an action for false imprisonment (a). Hence a company have no authority to detain a passenger while inquiries are being made into the correctness of a name or address. The provision applies to season ticket holders as well as to others (b). It sometimes happens that a man has really got a ticket, but cannot find it when he is asked for it, and refuses to pay or give his name and address. In such cases he should be given plenty of time and every opportunity of finding the ticket. If the company detain him too soon, and without giving him every reasonable opportunity, they may find themselves obliged to pay damages for false imprisonment; for it has been held that in such cases it is a question for the jury whether or not the passenger did, in fact, fail to produce his ticket (c); and probably the jury will take that view of the facts which is least favourable to a company who have arrested a man who had, in fact, got a ticket. Where a person is asked to produce his ticket while he is actually in a train, and does not produce it or pay, but does give his name and address, another difficult question arises, namely, whether he can be ejected from the train. If he has never had a ticket, he has no right to be in the train and can be put out, provided no

(a) *Knights v. L. C. & D. Ry. Co.* (1893), 62 L. J. Q. B. 378. See also *Ormiston v. G. W. Ry. Co.*, [1917] 1 K. B. 598, *post*, p. 217.

(b) See *Woodard v. Eastern Counties Ry. Co.* (1861), 30 L. J. M. C. 196.

(c) *Brotherton v. Metropolitan and District Joint Committee* (1893), 9 T. L. R. 645.

more force is used than necessary, even though he is ready and willing to pay the fare (*d*). But if he has had a ticket and lost it, then he is lawfully in the train by virtue of his contract with the company, and the only thing the company can do is to sue him for the fare. If the company's servants turn him out, they have assaulted him, and probably the company will be liable in an action for damages for assault (*e*).

It is to be noticed that the deliberate refusal to either produce a ticket, or pay, or give name and address, is an offence of itself, even though the passenger has, in fact, got a ticket. But where a ticket is not produced it is likely that the passenger is attempting to defraud the company, and then other charges may be preferred against him under the same section. The section further provides that, "If any person (a) travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; or (b), having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or (c), having failed to pay his fare, gives, in reply to a request by an officer of a railway company, a false name or address," he shall be liable to a fine not exceeding 40s. for a first offence, or, if he offends again, to a fine not exceeding 20*l.*, or to imprisonment for a time not exceeding one month. In a charge under any of these provisions the important point is the fraudulent intent. It is no offence for a passenger to travel without a ticket, or beyond his destination, if there is no intention to defraud, though possibly he may be liable to be sued on his contract for some breach of the conditions. If, however, there is the intent to travel and to avoid payment, an offence is committed.

(*d*) *McCarthy v. Dublin, W. & W. Ry. Co.* (1870), 1 R. 5 C. L. 244.

(*e*) *Butler v. M. S. & L. Ry. Co.* (1888), 21 Q. B. D. 207.

In *Langdon v. Howells* (f) a man took a tourist return ticket from Ludlow to Milford. He broke the journey at Hereford, and subsequently went to Milford by a different route, retaining his ticket. The respondent bought the outward half of the ticket from him and used it to travel to Milford. He gave a false account as to how he had come by it, and the ticket was marked "not transferable." The company accordingly took proceedings against him for travelling without having previously "paid his fare," and with intent to avoid payment thereof. The magistrates refused to convict, but the High Court held that the respondent should have been convicted. Cockburn, C. J., said: "It is not a case of a single ticket taken by A., but which A., being unable to use it, hands over to B., a case which possibly might admit of different considerations. The ticket was a return ticket, which the company issues at a cheaper rate, because they find it advantageous to issue tickets to persons intending to return at a cheaper rate. If it is given by the original taker to a person who seeks to use it for a single journey, and so to travel at the cheaper rate for such journey, it seems to me clear that such person does travel without having previously paid his fare with intent to avoid payment thereof."

The expression "paid his fare" in the Act means paid his fare to the railway company. Therefore a person who buys any non-transferable ticket from another person to whom it has been issued, and who uses it to travel on the railway, may be convicted of travelling without having previously paid his fare and with intent to avoid payment thereof (g).

In *Gillingham v. Walker* (h) the respondent travelled in a second class carriage, having only taken a third class ticket, and a similar charge was preferred against him by the appellant on behalf of the railway company.

(f) (1879), 4 Q. B. D. 337.

(g) *Reynolds v. Bensley*, [1919] 1 K. B. 215.

(h) (1881), 44 L. T. 715.

The magistrate found as a fact that the respondent had acted fraudulently, and with intent to avoid payment of the higher fare, but he refused to convict on the ground that he had paid a fare, though he had not paid his proper fare. The High Court, however, held that he ought to have been convicted.

Where a person travels without a ticket, the fare may be recovered from him by the company quite irrespective of his liability to punishment for fraud (*i*).

Another offence, punishable by a fine of 40s., is committed by any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit the carriage (*k*).

A similar penalty is incurred by any person who trespasses on any railway after having been once warned by the company or any servant of the company not to do so (*l*). Further, if any person wilfully trespasses upon any railway, or upon any station, works, or premises connected with any railway, and refuses to quit on being requested so to do by any servant of the company, he may be arrested and is liable to a fine of £5 (*m*).

For the safety of passengers in case of emergency it is provided that every company must supply in every train which travels more than 20 miles without stopping efficient means of communication between the passengers and the servants of the company who have charge of the train. Any passenger who uses such means of communication without reasonable or sufficient cause is liable to a fine of £5 (*n*). This is an offence irrespective of the distance which the train travels without stopping (*o*). There are many crimes in regard to railways for which punishment is provided by Act of Parliament, but these are for the most part outside the scope of this book.

(*i*) Regulation of Railways Act, 1889, s. 5 (4).

(*k*) Railways Clauses Act, 1845, s. 103.

(*l*) Regulation of Railways Act, 1868, s. 23, as amended by the Regulation of Railways Act, 1871, s. 14.

(*m*) Railway Regulation Act, 1840, s. 16.

(*n*) Regulation of Railways Act, 1868, s. 22.

(*o*) *Jones v. Bethel*, [1919] 1 K. B. 219.

In many difficulties with their passengers railway companies have to rely upon their bye-laws. Bye-laws can only be made under powers expressly given by Act of Parliament. When made within such powers, and with the observance of all conditions prescribed by Parliament, bye-laws are real laws, and are enforced, like other laws which create offences, by proceedings before magistrates for fine or imprisonment. A bye-law cannot be valid which is outside the powers given by Parliament, or which is contrary to the general law of the land, or which is unreasonable. If a company have professed to make a bye-law which they have no power to make, the bye-law is said to be *ultra vires*; and if proceedings are taken with the object of punishing a breach of such bye-law, the Courts will refuse to act upon it and will pronounce it invalid. But where a Court pronounces a bye-law to be invalid, such judgment does not, in theory, have the effect of annulling or revoking the bye-law; the Court merely refuses to act upon it in the individual case which is being tried before it.

Railway companies are given powers to make bye-laws by the Railways Clauses Act, 1845 (*p*). As far as passengers are concerned, their powers are for "preventing the smoking of tobacco and the commission of any other nuisance in or upon such carriages or in any of the stations or premises occupied by the company," and generally "for regulating the travelling upon, or using and working of, the railway." They may also make bye-laws for maintaining order in, and regulating the use of, railway stations and the approaches thereto (*q*).

The bye-laws must not be repugnant to the laws of that part of the United Kingdom where they are to have effect, or to the Act creating the power, or to the special Act of the company. A maximum fine of 5*l.* may be prescribed as the penalty for an offence against a bye-law, and if the infraction of any bye-law is attended with

(*p*) Sects. 108 to 111.

(*q*) Regulation of Railways Act, 1889, s. 7.

danger or annoyance to the public or hindrance to the company in the use of the railway, the company may take summary means to obviate or remove such danger, annoyance or hindrance, without prejudice to any penalty incurred. The bye-laws must be exhibited in a conspicuous place in every station, or else no penalty can be recovered. They must also, before they can become operative, be approved by the Minister of Transport (r). When a bye-law satisfies all the regulations as to its validity, it is binding upon all persons without any further notice to such persons.

All the great companies have made bye-laws in the same terms, and these have been approved by the Board of Trade. They may be read in the published time-tables of any company or at any railway station. It is to be noticed that the approval of the Minister of Transport does not necessarily make a bye-law valid. It is only a Court of Justice that can decide the question of validity, and the Courts pay no regard to the opinion of a Government Department on such question. Many of the bye-laws made by the railway companies of England before the year 1905 were disapproved of by the Courts, and were practically worthless. In that year, however, all the companies made fresh bye-laws, and these new bye-laws are probably valid. The great principle upon which the Courts held some of the old bye-laws to be invalid is that an act which the law has declared to be criminal only when committed with a fraudulent intention cannot be made into a criminal act by the bye-law of a railway company irrespective of any fraudulent intention.

It is to be noticed that, whether a bye-law is valid as a bye-law or not, it may be binding upon a passenger as part of his contract with the company if it is incorporated in that contract by being referred to on the ticket (s).

Under the bye-laws now in force the most serious

(r) Railway Regulations Act, 1840, ss. 8, 9. The powers conferred on the Board of Trade by this Act have been transferred to the Minister of Transport by the Ministry of Transport Act, 1919.

(s) *Butler v. M. S. & L. Ry. Co.* (1888), 21 Q. B. D. 207.

offences are taking a loaded gun or any inflammable, explosive, or corrosive substance into a train or a station, or wilfully injuring any property belonging to the company. The penalty for these offences may be up to 5*l.* for a first offence. Other offences include entering a train for the purpose of travelling without having taken a ticket (*t*) ; defacing or destroying a ticket ; entering a carriage already containing its full complement of passengers against the will of any passenger therein ; a male person above eight years of age travelling in a compartment reserved for females without permission from the guard ; entering or leaving a train while in motion ; travelling while suffering from any infectious or contagious disease except by permission of the company ; travelling in a state of intoxication ; using threatening, indecent or profane language in a train or station ; taking a dog or other animal into a carriage without permission from the guard ; smoking in any carriage not provided for smoking ; gambling in a train or station ; throwing out of a carriage window any bottle or other thing likely to cause injury ; and spitting on the floor of any carriage or in any part of the station. For these offences the penalty as a rule is limited to 2*l.* for a first offence and 5*l.* for a subsequent one. Also in many cases the offender may be removed from the company's train or premises without prejudice to any penalty he may have incurred (*u*).

A person discovered committing the offence of travelling with intent to defraud the company may be arrested and detained until he can be brought before a magistrate (*x*). A person may also be arrested by an officer of the company, if his name and address are unknown, who commits any offence against the provisions of the Railways Clauses Act, 1845, or against those of the special Act of the company (*y*). Of course, too, under the general law of the

(*t*) A person entering a train without having taken a ticket may be removed even though he is willing to pay (*McCarthy v. Dublin, Wicklow and Wexford Ry. Co.* (1870), 1. R. 5 C. L. 244).

(*u*) See Appendix, p. 254.

(*x*) Railways Clauses Act, 1845, s. 104.

(*y*) *Id.* s. 154.

land, persons may be arrested who are found committing any felony or assault upon the trains or premises of a railway company. There does not, however, seem to be power to arrest for breach of bye-laws. The greatest caution should be exercised by the servants of railway companies in arresting a person, for if they are under a mistake as to the facts the company may have to pay heavy damages in an action for false imprisonment.

The company will not be liable if a servant acts without any authority, but if he acts within his authority his employers must suffer for his mistake. A person found committing a felony or an assault may be arrested by anyone. A constable may arrest any person whom he reasonably suspects to have committed a felony. A special constable employed by a company is the servant of the company, and if he arrest a person for felony without having reasonable grounds to suspect that person of felony the company are liable (z). Where power is given to an officer of the company to arrest, servants of inferior rank should not act except by way of assisting their superiors.

The general principle of the liability of the company for a wrongful arrest made by a servant seems to be: that if upon the facts which the servant believed to exist the company might have properly arrested, they are answerable for the act of their servant; but if the company would have had no power to arrest, even if the facts had been as the servant believed, or if the servant was not a proper person to act in any case, then they are not responsible (a). Thus, where a porter took hold of a passenger and wrongfully accused him of travelling in a first class compartment with a third class ticket, it was held that the railway company were not liable in an action by the passenger for assault and false imprisonment, for the company had no power to arrest for the offence which was alleged and therefore they could not authorize the porter to arrest (b).

(z) *Lambert v. G. E. Ry. Co.*, [1909] 2 K. B. 776.

(a) See *Poulton v. L. & S. W. Ry. Co.* (1867), L. R. 2 Q. B. 534.

(b) *Ormiston v. G. W. Ry. Co.*, [1917] 1 K. B. 598.

PART III.

STATUTORY CONTROL OF RAILWAYS.

CHAPTER XIV.

FACILITIES.

THE railways of England have all been made by companies with capital subscribed or lent by private persons. It is obvious that no ordinary limited company could make a railway, except for a very short distance, for they would have no power of acquiring the necessary land. A railway company need peculiar powers to enable them to acquire land compulsorily from unwilling owners, and therefore, every railway company has been created by a special Act of Parliament conferring such powers. Most of our existing great railways have been formed by the union of a number of small railways, so that a great company traces its origin to several sources and to a number of special Acts. In addition to the special Acts there are certain general Acts known as Railway Clauses Acts and Companies Clauses Acts which are only applicable if incorporated in a Special Act, and which were passed to avoid the necessity of repeating in each Special Act a great mass of provisions relating to the taking of land and the formation of such companies. There are other general Acts which apply to all railway companies without being incorporated in any special Act.

It is outside the scope of this book to consider the formation, regulations or management of railway companies. It only proposes to deal with the relations between the company as a carrier on the one side and the company's customer on the other side.

Parliament has provided for the control of these relations in many directions. It is provided by Section 2 of the Railway and Canal Traffic Act, 1854, that every railway company must according to their powers afford all reasonable facilities for receiving, forwarding, and delivering traffic upon their railways; and where two or more companies have railways forming a continuous line, or where one company has a station near a station of another company, such companies must afford all reasonable facilities for through traffic, so as to afford the public all reasonable accommodation. "Traffic" means passengers and their luggage, and all kinds of goods, animals and other things carried by any railway company, and also waggons or trucks suitable for running on the railway.

As every railway company is a monopolist, in a greater or less degree, and only exists by being endowed with exceptional powers, it is only reasonable that such a company should be obliged in consideration of such privileges to serve the public to its utmost ability.

Several Government departments have been entrusted by Parliament with various powers and duties in relation to railways, but the Board of Trade is the department upon which most of such powers and duties have been conferred.

The requirements of Government are enforced, and many matters of dispute between Government and company, between company and company, and between company and trader are determined through the machinery of a special legal tribunal of great authority and high standing styled the Railway and Canal Commissioners. This court is formed of three judges or "Commissioners." Two of these are specially appointed Commissioners, and act for the whole of the United Kingdom. The third Commissioner, who is the president of the Court, is a judge nominated from the judges of the superior Courts of that part of the United Kingdom where the Commissioners meet.

When the Great War broke upon the country in 1914, the Government immediately put in force their powers of

controlling railways under the Regulation of the Forces Act, 1871. This Act provides that when His Majesty declares that a national emergency has arisen the Government may take possession of any railway, or any locomotives, rolling stock, or other plant of any railway company, and may use the same for His Majesty's service; and the directors, officers, and servants of any such company must obey the directions of the Government as to the use of such railway or plant. Provision is made for the compensation of any company whose property is taken for all losses suffered, and the Government stands in the place of such company with regard to contracts between the company and others. Most of the railways of England remained under the control of the Government throughout the War, but the Government interfered as little as possible with the companies in their business relations with their customers. During the period of control Parliament guaranteed the shareholders against loss; but early in the war it became obvious that as soon as the guarantees ceased it would be impossible for the companies to carry on their business at pre-war rates and fares owing to the great disturbance caused by the war in the finances of the country, the remarkable change in the value of money, the great rise in wages, and the demand for radical changes in the management and ownership of the railways. In these circumstances the Ministry of Transport Act, 1919, was passed which establishes a new Government Department "for the purpose of improving the means of, and the facilities for, locomotion and transport." To this Department has been transferred most of the powers formerly held by the Board of Trade and other Departments in relation to railways. An exception is, however, made as to the powers of the Board of Trade with respect to the appointment of members and the procedure of the Railway and Canal Commission. These powers have been transferred to the Home Secretary. As the Minister of Transport must often be a party to legal proceedings before the tribunal, it is clearly proper that

the judicial body should be independent of the Department which is a party.

With a view to affording time for the consideration and formulation of the future policy in regard to railways the war possession and control has been continued till 15th August, 1921. Till that date all rates, fares and other charges, as well as all wages, salaries, conditions of employment, etc., are controlled by the Minister of Transport. The Minister of Transport can require any company to give the public such facilities as is thought reasonable, by adopting the best equipment, by carrying out improvements, by working in co-operation with other companies, by affording running powers to other companies, and in other ways.

A company, however, cannot be compelled to give such facilities where in order to do so capital expenditure must be incurred which would seriously interfere with the company's finances.

Orders may be made by the Railway and Canal Commissioners compelling a railway company to give reasonable facilities and compelling two or more companies to make mutual arrangements for accommodating the public by facilitating through traffic at through rates or fares. Proceedings may be taken before the Commissioners by any persons complaining of any violation or contravention of the law relating to facilities or undue preference, or by any person affected by any matter within the jurisdiction of the Commissioners.

A complaint may also be made as to any matter within the jurisdiction of the Commissioners by a local authority or by any such association of traders or chamber of commerce or agriculture as may obtain a certificate from the Board of Trade (a) that it is a proper body to make such complaint.

The general principle is that a company can only be called upon to afford facilities "according to their powers."

(a) This power has not been transferred to the Minister of Labour but is retained by the Board of Trade.

It is clear that no company could be required to carry things which it was not reasonably possible for them to carry, such as things too large to pass under bridges, articles of immense weight, and such-like. But the powers that usually have to be considered are not their physical powers, but their legal and financial powers; and as the powers given by Parliament to some companies are different from those given to other companies, an order might be made by the Commissioners compelling one company to do something which they would not attempt to compel another to do. Also their powers may be much affected during war by the restrictions of the Government (b) and a complaint of failing to give facilities may be met by showing that such failure was due to the Government control of the railway (c).

The Commissioners consider the convenience of the public before everything else in making orders to give facilities. But they will not order anything to be done, even though proved to be convenient to the public, if it is likely to disorganise the general system or method in which the company find it convenient to work their traffic; nor will they order anything to be done where the cost of doing it would be so great that it would be unreasonable to require the company to incur such expense (d).

One of the chief duties of every railway company is to provide platforms, offices, sidings, etc., sufficient to afford to the public every reasonable convenience in relation to both passenger and goods traffic, so as to avoid all danger, confusion or delay. If the company do not reasonably perform this duty, they may be compelled by the Commissioners to perform it and to supply proper accommodation. But the Commissioners, when making an order to put right what is wrong, have no

(b) See *Jones v. G. N. Ry. Co.* (1918), 34 T. L. R. 467.

(c) See *Denaby & Cadeby Main Collieries, Ltd. v. G. C. Ry. Co.* (1915), 31 T. L. R. 386.

(d) *Sussex County Council v. London, Brighton and South Coast Ry. Co.* (1892), 8 Ry. & Can. Tr. Cas. 17.

power to control the discretion of the company as to the precise method in which they will carry out the order and remedy that which is wrong. Thus, the Commissioners may order certain facilities to be given, the giving of which may involve the enlargement of existing platforms or the erection of new buildings, but they have no power to order a building to be erected of a specified design or on a particular spot (e). If a station or any other building is too small for its purpose, the Commissioners may order an enlargement to be effected, but they cannot make such an order unless the company are the owners of land sufficient for the enlargement, for if the company do not own such land the facility ordered would be beyond their powers, as probably they could only acquire the necessary land under an Act of Parliament (f). Neither can the Commissioners order a company to do anything which the law forbids them to do except with the consent of some person or public body ; but a company cannot refuse to carry out an order on the ground that by so doing they would be breaking an agreement which has not been sanctioned either by the Minister of Transport or by an Act of Parliament.

The duty of a company to afford facilities is only a duty in respect of existing lines and stations. They cannot be called upon to lay down a new line, even though they have been granted power by Parliament to make it, where they have not chosen to exercise that power ; nor can they be compelled to build a station where no station is. In one case a company had a station on a branch line which they first closed for passenger traffic and subsequently removed altogether on the ground that they were losing by the traffic. Five years afterwards, on the application of a local authority, the Commissioners made an order directing the company to give facilities for passenger traffic on this branch. These facilities could

(e) *S. E. Ry. Co. v. Hastings Corporation* (1881), 6 Q. B. D. 586.

(f) *Thomas v. N. Staffordshire Ry. Co.* (1876), 3 Ry. & Can. Tr. Cas. 1.

not be given without rebuilding the station. The company appealed against this order, and the Court of Appeal held that the Commissioners had no jurisdiction to make it, as they could only order facilities in respect to an existing thing and could not compel the company to build a station where no station was (*g*). But a company may be ordered to lengthen platforms too short for conveniently dealing with their passenger traffic, and to provide siding accommodation sufficient for the convenient, safe, and speedy receipt and delivery of goods. They may also be ordered to provide for the junction of private sidings and private branch railways with the lines of the company (*h*); but no such order will be made where a proposed junction cannot be made without serious inconvenience to the general traffic of the railway (*i*).

In reference to passenger traffic also, a railway company may be ordered to provide a roof over a platform to protect passengers from the weather and to provide suitable waiting-rooms and cloak rooms. They may also be ordered to provide suitable urinals and water-closets for the use of passengers (*k*); but they cannot be compelled to supply what is merely for the comfort of passengers.

To make charges in excess of what they are authorized to charge either for goods or passengers is not of itself a failure by a company to afford reasonable facilities; but if excessive charges are demanded in order to prevent persons from using particular stations or particular trains the Commissioners may probably treat such demand as a refusal of facilities (*l*).

Again, where delay or unreasonable detention of trucks is caused by want of sufficient locomotive power, the company may be ordered to supply sufficient power according

(*g*) *Darlaston Local Board v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. 694.

(*h*) Railways (Private Sidings) Act, 1904.

(*i*) *Greenwood v. Cheshire Lines Committee* (1909), 13 Ry. & Can. Tr. Cas. 169.

(*k*) *Metropolitan Water Board v. L. B. & S. C. Ry. Co.*, [1910] 2 K. B. 890.

(*l*) *G. W. Ry. Co. v. The Railway Commissioners and Brown* (1881), 7 Q. B. D. 182.

to their powers (*m*) ; and they are bound (except for certain kinds of goods (*n*), to supply sufficient wagons to deal expeditiously with the traffic offered to them. If they are unable to supply sufficient wagons for a trader, then the trader may demand as a "reasonable facility" that his goods be carried on the railway in his own wagons (*o*).

The Ministry of Transport Act gives (*p*) the Minister power to purchase privately-owned wagons and to work or lease them when so purchased or to apportion them among the companies ; but if he exercise this power in regard to wagons used for any particular class of traffic he must purchase all the privately-owned wagons used for that class of traffic in England and Wales, or in Scotland, or in Ireland respectively. When the Minister exercises the power of purchase, or prohibits or restricts the use of privately-owned wagons, or limits the number of wagons to be used in any particular class of traffic, the reasonable facilities which every company is required to afford includes the provision of suitable wagons for the use of the traders of that class, and the Minister must so exercise his powers of working or disposing of the wagons as to enable each company to fulfil their obligations as fully as is practicable.

The Commissioners will seldom interfere with regard to the number of trains which a company choose to run, but where a strong case is made out, they will sometimes order a company to run more trains (*q*).

Every company is bound to carry the mails and post-office servants in charge of them so as to satisfy the requirements of the Postmaster-General. The remuneration for so doing must be fixed by arbitration, or by the Commissioners, where a company fail to agree terms

(*m*) *Watkinson v. Wrexham, Mold and Connah's Quay Ry. Co.* (1880), 3 Ry. & Can. Tr. Cas. 446.

(*n*) See *post*, p. 236.

(*o*) *Spillers and Bakers, Limited v. G. W. Ry. Co.*, [1911] 1 K. B. 386.

(*p*) Sect. 13.

(*q*) *Innes v. London, Brighton and South Coast Ry. Co.* (1875) 2 Ry. & Can. Tr. Cas. 155.

with the Postmaster-General (*r*). The Board of Trade also has power to call upon railway companies to provide sufficient workmen's trains at cheap rates between the hours of 6 o'clock a.m. and 8 o'clock a.m. where sufficient workmen of a class requiring such accommodation reside in any district served by the company (*s*).

With regard to through traffic, any company or any member of the public may call upon several railway companies to combine to carry traffic through on their different systems at a through rate for one payment (*t*). If this request is not granted, the person or company demanding the facility may make a complaint to the Board of Trade ; and if the Board fail to make an arrangement with the railway company, application may be made to the Commissioners to compel the railway company to grant the facility. On the hearing of such application the Commissioners will consider whether the through rate demanded is a reasonable facility in the interests of the public ; and if they think it is so, they may order the proposed rate, or else fix any other rate which they think just and reasonable. The Commissioners may also secure to the public as passengers a system of through booking by reasonable routes so as to obtain for them the most convenient modes of travelling on existing lines at reasonable fares. They may order through booking of passengers for one payment without ordering through services of trains.

(*r*) See Railways (Conveyance of Mails) Act, 1838 ; Railway Regulation Act, 1844, s. 11 ; Regulation of Railways Act, 1868, s. 36 : and Regulation of Railways Act, 1873, ss. 18, 19.

(*s*) Cheap Trains Act, 1883.

(*t*) Railway and Canal Traffic Act, 1888, s. 25.

CHAPTER XV.

PREFERENCE.

THERE is nothing in the common law which forbids a carrier to treat one customer more favourably than another, or to charge one less than the other for similar services, provided the higher charge is not an unreasonable one. In this respect again, however, Parliament has interfered to restrain railway companies in the exercise of their discretion in dealing with their customers.

There are two main provisions with this object. The first is contained in sect. 90 of the Railways Clauses Act, 1845. By this section companies may vary their charges so as to accommodate them to the circumstances of the traffic, but they are forbidden to prejudice or favour particular parties, and are required to charge all persons equally for the carriage of either passengers or goods of the same description over the same portion of any line under the same circumstances. This only applies to traffic between the same points of departure and arrival, and has no application to charges on different portions of a railway. It applies to goods which are carried under the same circumstances as regards the services rendered by the company, and which are of the same description so far as carriage is concerned, irrespective of the actual nature of the goods (*a*).

To charge higher rates on goods carried between two points on a railway where the goods are to go to places off the railway, than on goods of the same description between the same two points which are not to go on, is not justifiable (*b*).

(*a*) *G. W. Ry. Co. v. Sutton* (1869), L. R. 4 H. L. 221.

(*b*) *N. Staff. Ry. Co. v. Edge*, [1920] A. C. 254.

Where a company charge one person more than another for goods of the same description carried between the same points under the same circumstances, the person who is charged the higher sum may recover by action from the company the excess which he is charged over the charge made to the other (c).

The most important provision, however, regarding discrimination between customers, is contained in sect. 2 of the Railway and Canal Traffic Act, 1854. This provides that no railway company may give undue or unreasonable preference to any particular person or company or to any particular description of traffic, nor may they subject any particular person or company or description of traffic to any undue or unreasonable prejudice. It must be noticed that it is not preference that is forbidden, but *undue* preference, *i.e.*, preference which is unfair or made without good cause. Similar charges should be made for similar services; and whenever it is proved that one trader, or class of traders, is charged less for the same kinds of goods and for similar services than another trader or class of traders, a presumption arises that the former is being unduly preferred, and the burden of proving that such difference in treatment does not amount to an undue preference lies upon the railway company (d). But the mere fact that one trader is given better terms than another is no conclusive proof that the preference is undue, though in that case the company may be called upon to explain the position and show that the preference given is fair and justifiable. There are various grounds on which a railway company may prove that it is fair and reasonable, and therefore lawful, to prefer one customer to another. Thus where there are circumstances which make the cost of carrying for one less than the cost of carrying for another, the company are justified in charging the former a less sum in proportion to the difference in

(c) See *Denaby Main Colliery Co. v M. S. & L. Ry. Co.* (1880), 11 App. Cas. 97.

(d) Railway and Canal Traffic Act, 1888, s. 27 (1).

the cost of carriage. For example, if A.'s goods were carried on a stretch of level line, while B.'s goods of the same description were carried up a steep gradient, it would be reasonable for the company to charge A. less than they charged B. (e).

Again, in the case of *Holwell Iron Co. v. Midland Ry. Co.* (f), the S. Iron Co. were the owners of certain land adjoining the railway, upon which were sidings and private railways. The railway company bought this property from the S. Co., paying as part of the consideration a sum of money, and as another part agreeing to carry goods and perform certain other services for the S. Co. for ever on certain low terms. After this agreement had been in force over forty years the H. Iron Co., who were rivals in trade of the S. Co., complained that the S. Co. were unduly preferred to them because the railway company refused to give the H. Co. the same terms as they gave the S. Co., and that there was an unfair difference in the treatment of the two trading companies. The Court, however, held that a trader who sold land to a railway company might receive payment for such land partly in cash and partly in services, and that such an agreement was not illegal merely because such trader in this way obtained those services at lower rates than other traders. It was therefore decided on this principle that there was no undue preference of the S. Co. to the H. Co.

Questions whether preference is undue are determined by the Railway Commissioners. In dealing with such questions the Commissioners will give greater weight to considerations affecting the interests and welfare of the public than to any other considerations, provided they can favour the interests of the public without laying unfair burdens on the railway company or forcing unremunerative traffic upon them. Hence, though it might be unreasonable to carry goods of a certain de-

(e) *Bellsdyke Coal Co. v. North British Ry. Co.* (1875), 2 Ry. & Can. Tr. Cas. 105. See *Newry Commissioners v. G. N. Ry. Co.* (1891), 7 Ry. & Can. Tr. Cas. 184.

(f) [1910] 1 K. B. 296.

scription to a certain station for one trader and to refuse to carry similar goods to that station for another trader in the same town, it might be quite reasonable to carry such goods to that station for the corporation of the town while refusing to do so for any private trader; for such an exception in favour of the corporation might be for the benefit of the inhabitants of the town at large, while the giving of the same facilities to all might disorganise the traffic of the company (g).

Where a company in conducting their traffic between two towns are subject to competition by sea or otherwise, it may be justifiable to make lower charges for the traffic between those two towns than between two other towns equally distant from one another where there is no such competition (h). But no place should without very good reason be deprived of the advantages given to it by its geographical position (i). Thus, if X. be 80 miles and Y. 130 miles distant from some large centre of population upon the same line, it would *primâ facie* be undue preference to Y. to make the same charges for the carriage of similar goods to the large place from the two towns, for this is depriving X. of the natural advantage it enjoys of being fifty miles nearer the great place than the other. There may, however, be circumstances which make a preference of Y. reasonable because for the public benefit; and if that can be shown, the preference is not undue (k). Thus where a great city is supplied with some commodity in large demand by both X. and Y. it is clear that the larger the supply the lower the price of the commodity is likely to be to the inhabitants. But possibly it may not pay the traders of Y. to send their goods and sell them in competition with goods of the same description sent by the traders of X. unless the

(g) *Lees v. Lancashire and Yorkshire Ry. Co.* (1874), 1 Ry. & Can. Tr. Cas. 352.

(h) *Foreman v. G. E. Ry. Co.* (1875), 2 Ry. & Can. Tr. Cas. 202; *Muntz's Metal Co. v. L. & N. W. Ry. Co.* (1911), 14 Ry. & Can. Tr. Cas. 284.

(i) *Timm v. N. E. Ry. Co.* (1901), 11 Ry. & Can. Tr. Cas. 214.

(k) See Railway and Canal Traffic Act, 1888, s. 27 (2).

charges to them are considerably lower in proportion than the charges made to the traders of X. If, however, the Commissioners are satisfied that in the interests of the inhabitants of the city a supply of the commodity in question is required from both X. and Y., and that this supply can only be obtained by a certain preference of Y., such preference will probably be held to be justifiable (l).

Again, although as a rule a trader has a right to equal treatment with all other traders of the same kind supplying the same traffic, it may be justifiable to give one better terms than another on the ground that he supplies traffic in much larger quantities than the other, or packed in such a way as to make handling easier and therefore less costly to the company, or because the traffic is supplied at irregular intervals by one, and not by the other. In all such cases the circumstances are different, and where that is so a company may fairly prefer the trader whose arrangements are such as to effect a saving of expense to the company (m). For example, where a trader agrees to supply his traffic to a company only in full truck loads or full train loads, it is not undue preference to make lower charges to him than to other traders of the same kind who do not supply their traffic in the same way, provided the company are ready to give similar advantages to all traders who are ready to deal with the company in a similar manner, and provided the reduction of charge is in the circumstances reasonable in amount (n).

Where competitive routes are available between two places, as, for example, between London and Birmingham, it would be undue preference for a company to agree with a trader to give him better terms than other traders of the same kind in similar circumstances in consideration of his agreeing to send all his traffic exclu-

(l) See *Liverpool Corn Traders' Association v. G. W. Ry. Co.* (1891), 8 Ry. & Can. Tr. Cas. 114; *Castle Steam Trawlers, Ltd. v. G. W. Ry. Co.* (1908), 20 T. L. R. 317.

(m) *L. & N. W. Ry. Co. v. Evershed* (1878), 3 App. Cas. 1029.

(n) *Mansion House Association v. L. & S. W. Ry. Co.*, [1895] 1 Q. B. 927.

sively by that company for a certain time (o). But where there are competing railways, and one trader has access to the lines of two railway companies, it may be justifiable for one of the companies to give him better terms than they are prepared to give to another trader who has only access to their line, and not to the line of the other company, for the first company may not otherwise be able to get any of that trader's traffic (p). Again, it is not undue preference for a company to carry goods to a seaport town for shipment from that place at lower rates than they charge for goods of the same description intended for consumption in the place, for in such a case the goods intended for shipment do not compete with the goods intended for consumption (q).

It is a well-established principle that rates for a long transit are less in proportion than for a short transit. This is expressed in the saying, "Long lead, low rate." But where goods have come oversea from a foreign country and are forwarded from the port of arrival by railway to any place in the United Kingdom the home part of the transit must not be considered as part of a through route for the purpose of fixing charges. Foreign goods must not be favoured over home goods in respect to similar services (r). But foreign goods are in fact often carried by railway from ports to inland towns at rates which apparently favour the foreign over the home produce. If goods are preferred merely because they have come over sea, such preference is illegal; but it may be quite justifiable to prefer them because of the quantity in which they are delivered to the company, or of the mode in which they are packed. This subject was fully considered in the case of *The Mansion House Association v. The London and South Western Ry. Co.* (s), in which complaints were

(o) *Diphwys Co. v. Festiniog Ry. Co.* (1874), 2 Ry. & Can. Tr. Cas. 73

(p) *Phippis v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. 229.

(q) *Lancashire Patent Fuel Co. v. L. & N. W. Ry. Co.* (1904), 12 Ry. & Can. Tr. Cas. 77.

(r) Railway and Canal Traffic Act, 1888, s. 27 (2).

(s) [1895] 1 Q. B. 927

made that foreign produce arriving at Southampton docks and carried to London was unduly preferred over home produce. It was proved, however, that the meat, bacon, cheese, lard, wool, hops, hay and other goods in question were delivered to the company from ships in large quantities, in full truck loads and so packed as to take up very little room in proportion to weight. It was also proved that the trains used for carrying such goods were run through to London without a stop. On the other hand, it was shown that goods of the same description produced in the Southampton district were delivered to the company in very small quantities, were very badly packed, took up a great deal of room in proportion to their weight, and had to be picked up at a number of small stations. It was also shown that there was great economy in carrying foreign goods, though this was due in no way to the fact that they were foreign goods, but entirely to the circumstances in which they were delivered to the company. It was held by the Court of Appeal that the difference in charges which would have been fair if the goods delivered in large quantities had been home produce was not undue preference merely because the goods preferred were foreign.

If during the period of Government control (*t*) a trader takes proceedings before the Commissioners alleging undue preference it is no answer to any such complaint that the railway company was acting under the directions of the Minister of Transport (*u*). Undue preference is illegal, and there being nothing in the Ministry of Transport Act to authorize any such order, it seems clear that an order by the Minister to give undue preference would be *ultra vires*. If, however, any such order were given, the railway company obeying the order and adjudged legally responsible therefor would probably be entitled to be indemnified by the Minister for any consequent loss (*x*).

(*t*) See *ante*, p. 219.

(*u*) Ministry of Transport Act, 1919, s. 3 (1) (f).

(*x*) *Ibid.*, s. 8 (6).

Railway companies commonly act as carriers not only upon their lines, but also by road to and from their stations. In their capacity as road carriers they are equally bound not to give undue preference, and must not even prefer themselves unfairly to other carriers performing similar services (*y*). Thus, where a company charge their customers a rate for carriage which includes collection and delivery, it is undue preference of themselves to refuse to make a reasonable rebate in those charges to other carriers who collect and deliver themselves.

In dealing with passengers, all persons in a like position towards the company must receive the same treatment from the company. But there is nothing illegal in preferring certain persons to the general public because of their business relationship to the company. For example, it may be reasonable for a company to grant cheap season tickets to traders who do a large business with them (*z*). Where any person has been unduly prejudiced within the meaning of the Railway and Canal Traffic Act, 1854, by being charged a higher rate than some other person, he cannot recover the excess of charge by action (*a*). He may, however, make a complaint to the Railway Commissioners of the undue preference of the other; and if he make his complaint after a written notice to the company requiring them to remedy the matter has been disregarded, and within a year of the discovery by him of the excessive charge, the Commissioners may award him damages (*b*).

(*y*) *Palmer v. L. B. & S. C. Ry. Co.* (1871), L. R. 6 C. P. 194.

(*z*) *Inverness v. Highland Ry. Co.* (1901), 11 Ry. & Can. Tr. Cas. 218.

(*a*) *Lancashire and Yorkshire Ry. Co. v. Greenwood* (1888), 21 Q. B. D. 215.

(*b*) Railway and Canal Traffic Act, 1888, ss. 12, 13.

CHAPTER XVI.

RATES, CHARGES, AND FARES.

ALTHOUGH the common law merely requires that a carrier's charges must be reasonable, in the case of railway companies some special Act has fixed the maximum rates which every company is allowed to charge for the carriage of almost every description of goods. As each of our great railways has been formed by the union of a number of smaller railways, each of which was made under a Special Act giving power to charge, by the year 1888 there were more than 900 such Acts of Parliament in force, and it was almost impossible for a trader to find out what the legal charges were.

It was, therefore, enacted in the year 1888 (*a*) that every company should submit to the Board of Trade a new classification of goods and a revised schedule of the maximum rates chargeable in respect thereof, stating, in addition, the terminal charges to be made. Terminal charges are charges for station accommodation and for services rendered by the company in loading, unloading, covering, or uncovering the goods. Such classifications and schedules of maximum rates were duly prepared, considered by the Board of Trade, and settled by the Board after hearing parties interested as to disputed items. Having been settled, an order was made in respect of each company, and an Act of Parliament was passed confirming the order and making the classification and schedule binding upon that company. These Acts (*b*) in their general provisions are almost identical, and their provisions were substituted for those of the older special Acts.

(*a*) Railway and Canal Traffic Act, 1888, s. 24.

(*b*) The London and North Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, and similar Acts relating to the other companies.

Since the Great War, however, as has been explained (c), it has been found impossible to carry on the business of the railways at the charges authorized by these Rates and Charges Acts, and fresh legislation is absolutely necessary. During the period of control (d) the Minister of Transport has power to fix all rates, fares, and other charges, but the Ministry of Transport Act provided (e) for the appointment of an Advisory Committee to assist the Minister in exercising this power by holding an enquiry and reporting to him on the whole matter. The Minister having "determined that a complete revision of the rates, fares, dues, tolls and other charges on the railways of the United Kingdom is necessary," this Advisory Committee has been appointed, has held such enquiry and made a Report (f). Following this report a comprehensive Act will no doubt be passed in time dealing afresh with the whole subject of charges and the mode of fixing them. A new tribunal may be created with power to fix charges ; but while the classifications of goods, the schedules of rates, and the rules of procedure will probably be greatly changed, it is not likely that the established principles of law will be vitally affected. It is proposed, therefore, to explain the law relating to the partially suspended, but not yet repealed, Rates and Charges Acts of 1891 and 1892.

Under these Acts the maximum rate which may be charged for the carriage of merchandise includes in general the provision by the company of wagons and locomotive power. Generally the company are not obliged to provide wagons for very bulky kinds of traffic (such as coals), nor for certain articles (such as creosote) which are likely to injure their vehicles. With regard to such goods the maximum rate does not include provision of wagons

(c) *Ante*, p. 220.

(d) *i.e.* under Ministry of Transport Act, 1919, s.3. See *ante*, p. 221.

(e) Sect. 21.

(f) Ministry of Transport Rates Advisory Committee. Report on General Revision of Railway Rates and Charges, 1920. H.M. Stationery Office [Cmd. 1098].

but for that rate the company are obliged to convey such goods in the trader's wagons. If the company supply wagons for such goods, then they are entitled to make a charge in addition to the maximum rate, for the use of the wagons. For wagons so supplied the Ministry of Transport Act provides that a company may charge such sums as may be directed by the Minister, and, if and so far as no such directions are in force, the sums prescribed by any Rates and Charges Act applicable (*g*). A company are under no obligation to haul on their railway the wagons of a trader which contain any other kinds of goods for charges based on the rates for the carriage of such goods, unless they are unwilling or unable to supply sufficient wagons suitable to the traffic. If the company are not prepared to supply sufficient suitable wagons, then they must convey the goods in the wagons of the trader, but in that case they must give the trader a rebate upon the authorised rate (*h*). Also, if goods are carried for a trader in a separate truck which is loaded or unloaded in any place which is not a shed or building of the company, the trader has a right, if he chooses, to do the loading and unloading himself; and in this case the company may not make any charge for such loading or unloading.

The company may also charge a reasonable sum above the maximum rate whenever, by agreement with a trader, they render services at a siding not belonging to the company; where they collect or deliver goods outside their stations; where they weigh goods; where the company's trucks are detained or the company's sidings occupied by a trader beyond a reasonable time; and in a few other cases. Where trucks are detained by a consignee, the consignor at whose request the trucks were supplied may be answerable to the company for such detention (*i*). If the company detain wagons belonging to a trader for longer than a reasonable time, the trader also is entitled

(*g*) Sect. 13.

(*h*) See *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, [1911] 1 K. B. 386.

(*i*) *G. & S. W. Ry. Co. v. Polquhain Coal Co.* (1916), S. C. 36.

to a reasonable sum from the company by way of demurrage.

Every railway company is obliged to carry perishable goods such as fruit, fish, milk, meat, etc., by passenger train, or by some other speedy service. No company is obliged to carry any kind of goods except perishables and passenger luggage by passenger train. Companies may, however, carry other goods by passenger train, and in that case they are not bound to keep their charges below the authorised maximum rates. Being under no obligation to carry such goods by passenger train, they have a right to make such reasonable charges as they please for so doing (*k*).

Every company is bound to keep at each station books showing every rate for goods traffic from that station to any place to which they book. These books, and a book containing the classification of goods, must be open without charge for inspection by any person interested. On application by any person interested the company must render an account for the carriage of merchandise in which a charge for conveyance is distinguished from terminal charges (*l*).

Railway companies are not obliged to carry certain classes of goods at all, such as articles of unusual size or weight, wild beasts and dangerous things (*m*) ; and if they do carry such things, they may charge such reasonable sum as they think fit.

A company may, of course, charge rates below the maximum rates to any extent provided they do not give undue preference (*n*) to any consignor or class of consignors, or to any class of traffic, but they cannot charge above these rates ; and if alternative rates are quoted, the higher rate must not exceed the maximum. It is also probably correct to say that, except in the case of goods the carriage of which involves exceptional risk, if a company

(*k*) *Stone v. Midland Ry. Co.*, [1904] 1 K. B. 669.

(*l*) *Railway and Canal Traffic Act*, 1888, s. 33.

(*m*) *Ante*, p. 53.

(*n*) As to undue preference, see Chap. XV.

charge a maximum rate conditions limiting their liability for negligence will be held to be unreasonable (*o*).

Any person who is the owner or has the care of goods sent by railway must on demand give a correct account in writing signed by him of the nature and quantity of the goods. Any such person who gives a false account, or refuses to give such account on demand, is liable to a penalty (*p*); and if any person brings goods to a station for carriage and makes a false statement as to the nature of the goods in order to get the advantage of a lower rate, that person is liable to punishment (*q*). Where the person making such statement is a servant or agent, his principal is liable to the penalty, even though he was no party to the fraud, and even when the principal is a company (*r*).

Rates may be varied by a company from time to time provided they do not exceed the maximum, and it used to be a presumption at law that a rate could not be unreasonable which did not exceed the maximum. This presumption was, however, partly removed by the Railway and Canal Traffic Act, 1894, which provides that where a company has directly or indirectly increased any rate or charge since 31st December, 1892, if any complaint is made that such rate or charge is unreasonable it lies upon the company to prove that the increase is reasonable, and for that purpose it is not sufficient to show that the rate or charge does not exceed the authorised maximum. An example of an indirect increase is supplied by a case (*s*) in which it was shown that a rate on coal which had been calculated on a basis of 21 cwt. to the ton was, after a certain date, calculated by the railway company on a basis of 20 cwt. to the ton with an allowance of 2 cwt. per truck for wastage. During the period of Government

(*o*) *Peek v. N. Staffordshire Ry. Co.* (1863), 10 H. L. 473, per Cockburn, C.J.

(*p*) Railway Clauses Act, 1845, ss. 98 and 99. "False account" includes false weight. See *L. & N. W. Ry. Co. v. Rickaby* [1921] 1 K. B. 231.

(*q*) *Barr, Moering & Co. v. L. & N. W. Ry. Co.*, [1905] 2 K. B. 113; *General Electric Co. v. Evans* (1911), 105 L. T. 199.

(*r*) *Mousell, Bros., Ltd. v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 836.

(*s*) See *Rickett Smith & Co. v. Mid. Ry. Co.*, [1896] 1 Q. B. 260.

control, and for a further period of eighteen months after the expiration of that period, any charge directed by the Minister must be deemed to be reasonable, and may be charged notwithstanding any agreement or statutory provision limiting the amount of such charges (*t*). If a complaint is made that a rate has been unreasonably increased the matter is decided by the Railway Commissioners; but in the first place the complaint must be made to, and considered by, the Board of Trade who, if they think there is reasonable ground for such complaint, may call on the railway company for an explanation and endeavour to settle the differences amicably (*u*).

It seems, therefore, to be presumed that the rates in existence at the end of 1892 were sufficiently high according to the circumstances then existing; but if it can be shown that those circumstances have altered, it is open to the company to show that an increase is justified. Thus where a company made an increase in a rate for the carriage of coal, and the colliery owners complained that the increase was unreasonable, the railway company proved before the Commissioners that since the rate was fixed the cost of carrying the complainants' coal had increased from various causes, including a rise in wages and a reduction in the hours of labour. The Commissioners held that this increase in the cost of carrying justified an increase in the rate (*x*). In another case it was proved that in 1895 a company reduced their rates for the carriage of coal, and in 1900 raised them again to what they were in 1895. The company were required to show that this increase was justified; and in order to do so proved that the reduction in 1895 was made because of the depressed state of the coal trade, which state of depression had passed away in 1900. It was held that the increase in these circumstances was justified (*y*).

(*t*) Ministry of Transport Act, 1919, s. 3 (1) (e).

(*u*) This power has not been transferred to the Minister of Transport but is retained by the Board of Trade.

(*x*) *Charlaw and Sacriston Colliery Co. v. N. E. Ry. Co.* (1896), 9 Ry. & Can. Tr. Cas. 140.

(*y*) *N. Staffordshire Colliery Owners' Association v. N. Staffordshire Ry. Co.*, [1908] 2 K. B. 765.

Again, it is provided by the Railway and Canal Traffic Act, 1913, that where there has been a rise in the cost of carrying goods, resulting from improvements made by the company since 19th August, 1911, in the conditions of employment of their staff, the Commissioners are to treat an increase of rate as justified on proof by the company that such increase is part of an increase made to meet such rise, that such increase is not greater than is reasonably necessary for that purpose, and that the proportion of such increase allocated to any particular traffic with respect to which complaint is made is not unreasonable (z).

The fares which a railway company may charge for carrying passengers are also strictly controlled under statutory authority. In the case of each company the fares which may be charged are fixed by a Special Act of Parliament of the Company. It was enacted by the Cheap Trains Act, 1883, that every railway company may be compelled by the Board of Trade or the Railway Commissioners to provide proper and sufficient accommodation on their railways for passengers at fares not exceeding one penny a mile. As most of the great companies carried third class passengers, before the war, for a penny a mile by all their fastest trains compulsion has seldom been invoked.

In order that passengers should be fully informed as to the fares they may be required to pay, it is provided by sect. 15 of the Regulation of Railways Act, 1868, that "every company shall cause to be exhibited in a conspicuous place in the booking office of each station on their line, a list or lists painted, printed, or written in legible characters, containing the fares of passengers by the trains included in the time tables of the company from that station to every place for which passenger tickets are there issued." And it is further provided by sect. 6 of the Regulation of Railways Act, 1889, that

(z) As to the operation of this provision, see *Associated Portland Cement Manufacturers v. G. N. Ry. Co.*, [1916] 2 K. B. 262 and *Batterley v. Mid. Ry. Co.*, [1920] 3 K. B. 86.

“every passenger ticket issued by any railway company in the United Kingdom shall bear upon its face, printed or written in legible characters, the fare chargeable for the journey for which such ticket is issued, and any railway company issuing any passenger ticket in contravention of the provisions of this section shall be liable to a penalty not exceeding 40s. for every ticket so issued, to be recovered on summary conviction.” Certain tickets, however, are exempt from this provision. Thus, excursion or tourist tickets, tickets including a charge for admission to a show or entertainment, and tickets issued in accordance with public service warrants, need not as a rule bear on their faces the fares payable (*a*).

As to children, it is universal in England for companies to carry children under three years of age accompanying passengers without any charge, and children of three years and upwards, but under twelve years of age, at half the fare charged to an adult.

(*b*) See order of the Board of Trade, made under the powers of the Act of 1889.

APPENDIX.

THE CARRIERS ACT.

(1 WILL. IV. c. 68.)

An Act for the more effectual Protection of Mail Contractors, Stage Coach Proprietors, and other common Carriers for Hire, against the Loss of or Injury to Parcels or Packages delivered to them for Conveyance or Custody, the Value and Contents of which shall not be declared to them by the Owners thereof. [23rd July, 1830.]

WHEREAS by reason of the frequent practice of bankers and others of sending by the public mails, stage coaches, waggons, vans, and other public conveyances by land for hire, parcels and packages containing money, bills, notes, jewellery, and other articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of mail contractors, stage coach proprietors, and common carriers for hire is greatly increased: And whereas through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such mail contractors, stage coach proprietors, and other common carriers, by due diligence to protect themselves against losses arising from their legal responsibility, and the difficulty of fixing parties with knowledge of notices published by such mail contractors, stage coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act no mail contractor, stage coach proprietor, or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions following; (that is to say,) gold or silver coin of this realm or of any foreign state, or any gold or silver in a manufactured or

unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of the governor and company of the banks of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any mail or stage coach or other public conveyance, when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of ten pounds, unless at the time of the delivery thereof at the office, warehouse, or receiving house of such mail contractor, stage coach proprietor or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

II. And be it further enacted, that when any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such mail contractors, stage coach proprietors, and other common carriers to demand and receive an increased rate of charge, to be notified by some notice affixed in legible characters in some public and conspicuous part of the office, warehouse, or other receiving house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles as aforesaid at such office shall be bound by such notice, without further proof of the same having come to their knowledge.

III. Provided always, and be it further enacted, that

when the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty ; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the mail contractor, stage coach proprietor, or other common carrier as aforesaid shall not have or be entitled to any benefit or advantage under this Act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

IV. Provided always, and be it enacted, that from and after the first day of September now next ensuing no public notice or declaration heretofore made or hereafter to be made shall be deemed or construed to limit or in anywise affect the liability at common law of any such mail contractors, stage coach proprietors, or other public common carriers as aforesaid, for or in respect of any articles or goods to be carried and conveyed by them ; but that all and every such mail contractors, stage coach proprietors, and other common carriers as aforesaid shall from and after the said first day of September be liable, as at the common law, to answer for the loss of or any injury to any articles and goods in respect whereof they may not be entitled to the benefit of this Act, any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability, notwithstanding.

V. And be it further enacted, that for the purpose of this Act every office, warehouse, or receiving house which shall be used or appointed by any mail contractor or stage coach proprietor or other such common carrier as aforesaid, for the receiving of parcels to be conveyed as aforesaid, shall be deemed and taken to be the receiving house, warehouse, or office of such mail contractor, stage coach proprietor, or other common carrier ; and that any one or more of such mail contractors, stage coach proprietors, or common carriers shall be liable to be sued by his, her, or their name or names only ; and that no action or suit commenced to recover damages for loss or injury to any parcel, package, or person, shall abate for the want of joining any co-proprietor or co-partner in such mail, stage coach, or other public conveyance by land for hire as aforesaid.

VI. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to annul or in anywise affect any special contract between such mail contractor, stage coach proprietor, or common carrier, and any other parties, for the conveyance of goods and merchandizes.

VII. Provided also, and be it further enacted, that where any parcel or package shall have been delivered at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcels or packages shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid, in addition to the value of such parcel or package.

VIII. Provided also, and be it further enacted, that nothing in this Act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any coachman, guard, book-keeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, book-keeper, or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct.

IX. Provided also, and be it further enacted, that such mail contractors, stage coach proprietors, or other common carriers for hire shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but that he or they shall in all cases be entitled to require, from the party suing in respect of any loss or injury, proof of the actual value of the contents by the ordinary legal evidence, and that the mail contractors, stage coach proprietors, or other common carriers as aforesaid shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charges as before mentioned.

X. And be it further enacted, that in all actions to be brought against any such mail contractor, stage coach proprietor, or other common carrier as aforesaid, for the loss of or injury to any goods delivered to be carried, whether the value of such goods shall have been declared or not, it shall be lawful for the defendant or defendants to pay money into Court in the same manner and with the same effect as money may be paid into Court in any other action.

THE RAILWAY AND CANAL TRAFFIC ACT, 1854.

(17 & 18 VICT. c. 31.)

*An Act for the better Regulation of the Traffic on Railways
and Canals.* [10th July, 1854.]

WHEREAS it is expedient to make better provision for regulating the traffic on railways and canals : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

I. In the construction of this Act—

The word “ traffic ” shall include not only passengers, and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company :

The word “ railway ” shall include every station of or belonging to such railway used for the purposes of public traffic : and,

The word “ canal ” shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic :

The expression “ railway company,” “ canal company,” or “ railway and canal company,” shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any Act of Parliament :

A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's Church, in London.

II. Every railway company, canal company, and railway and canal company, shall, according to their respective

powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

[III. *relates to powers now vested in the Railway Commissioners.*]

[IV. and V. *have been repealed.*]

VI. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

VII. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void;

Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the Court or judge before whom any question relating thereto shall be tried to be just and reasonable: Provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sum so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such percentage or increased rate of charge shall be notified in the manner prescribed in the Statute Eleventh George Fourth and First William Fourth, Chapter Sixty-eight (*a*), and shall be binding upon such company in the manner therein mentioned: Provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: Provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act of the Eleventh George Fourth and First William Fourth, Chapter Sixty-Eight (*a*), with respect to articles of the descriptions mentioned in the said Act.

(*a*) The Carriers Act.

THE X.Y. RAILWAY. **CONSIGNMENT NOTE FOR GOODS TO BE CARRIED AT OWNERS' RISK.**

The X. Y. RAILWAY COMPANY hereby give notice that they have alternative rates for the carriage of the undermentioned goods at either of which rates the goods may be consigned at the sender's option, (1) the ordinary rate, and (2) a lower rate charged upon the terms of the following Special Contract.

To the **X. Y. RAILWAY COMPANY,** _____ Station, _____ 192

Receive the undermentioned goods for carriage at the lower rate subject to the condition that the Company shall not be liable for loss damage misconveyance misdelivery delay or detention of or to such goods or a trader's truck or sheet (if any) containing or covering them except upon proof that such loss damage misconveyance misdelivery delay or detention arose from the wilful misconduct of the Company's servants. But nothing in the aforesaid condition shall exempt the Company from any liability they might otherwise incur in the following cases of non-delivery pilferage or misdelivery that is to say:—

- (1) Non-delivery of any package or consignment fully and properly addressed unless such non-delivery is due to accidents to trains or vessels or to fire.
- (2) Pilferage from packages of goods protected otherwise than by paper or other packing readily removable by hand provided the pilferage is pointed out to a servant of the Company on or before delivery.
- (3) Misdelivery where goods fully and properly addressed are not tendered to the consignee within twenty-eight days after despatch.

Provided that the Company shall not be liable in the said cases of non-delivery pilferage or misdelivery on proof that the same has not been caused by negligence or misconduct on the part of the Company or their Servants.

This Agreement shall be deemed to be separately made with all Companies or persons who shall be carriers for any portion of the transit (herein respectively referred to as the Company) and to include the conditions endorsed hereon.

Signature of Sender or his Representative _____ Address _____

Senders must fully and accurately describe the contents of packages and must also clearly state whether carriage is payable by Sender or Consignee.

Owner and Wagon No.	To what Station and Railway to be sent.	CONSIGNEE.		No. of Articles.	Description of Goods and Marks.	WEIGHT.			Charges Paid on. £ s. d.	Who Pays the Carriage.
		Name.	Full Address.			T.	c.	lbs.		

Goods which may be required "**To wait order**" at any particular Station must be so consigned on this Note.

GENERAL CONDITIONS (a).

1. The Company shall not whether the carriage be by land or sea be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the Carriers' Act 1830 contained in any parcel or package when the value of such articles or property exceeds £10 unless the nature and value thereof be declared and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.

2. In respect of animals or goods intended to be carried by Shipping Companies or other Carriers by Sea the Company are authorised as agents for the sender to contract for such carriage upon the terms of any Bill of Lading or other conditions required by the Carriers by Sea.

3. The Company shall not be liable for loss from or for damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment or any part thereof or in the case of traffic to places outside the United Kingdom the termination of the carriage by a Railway Company of the United Kingdom nor for non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting Company.

4. When the Company perform the cartage the place of collection or delivery shall be the usual place of loading or unloading the goods into or from the road vehicles.

5. The Consignor or Consignee shall provide at his own risk and expense any power plant and labour (in addition to the Company's carman) required for loading or unloading road vehicles.

6. The transit shall (unless otherwise determined) be deemed to be at an end (a) in the case of goods to be carted by the Company when they are tendered at the place of delivery as defined in Condition 4, or (b) in the case of goods not to be carted by the Company or to be retained by the Company awaiting order at the expiration of 24 hours after notice of arrival is delivered to the consignee or at his address or should be so delivered in due course

(a) These are the conditions as endorsed on a London and North Western Railway Company's owner's risk consignment note, but they seem almost identical with those in use by the other companies.

of post or where the address of the consignee is not known at the expiration of 24 hours after the arrival of the goods at the place to which they are consigned or (c) in the case of goods consigned to a destination beyond the limits of the Company's delivery when they have been transferred to another carrier in the usual course for conveyance or delivery in which last-mentioned case the Company shall cease to be liable for any subsequent loss damage mis-conveyance misdelivery delay or detention arising from any cause whatsoever.

7. After the termination of the transit (as defined in Condition 6 (a) and (b) the Company will hold the goods as warehousemen subject to the usual charges.

8. The Company will charge in accordance with their scale for the time being for the detention of their trucks road vehicles or sheets or for the occupation of their Sidings by the trucks of private owners (a) before or after transit and (b) during transit in consequence of the Consignee not being ready to accept delivery.

9. All goods delivered to the Company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon or expenses in connection with such goods (including charges for warehousing or keeping such goods for detention of trucks road vehicles or sheets or for siding rent during the exercise of such lien) and all goods delivered to the Company under this Consignment note or otherwise will be received and held by them subject to a general lien for any moneys due to them from the owners of such goods upon any account and in case any such lien is not satisfied within a reasonable time from the date upon which the Company first gave notice to the owners of the goods of the exercise of the same the goods may be sold by the Company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses and charges.

10. Perishable articles (a) refused by the Consignee or (b) not taken away from the place to which they are consigned within a reasonable time after arrival or (c) insufficiently addressed or (d) not delivered in consequence of strike or riot may be sold without any notice to Sender or Consignee and payment or tender of the net proceeds of any such sale after deduction of freight charges and expenses shall be equivalent to delivery.

11. The Company shall not be liable for (a) loss of market (b) indirect or consequential damages (c) loss or delay due to inadequate or incorrect address or imperfect

labelling (d) loss or damage caused by insufficient or improper packing (e) loss damage or delay caused by or arising out of any strike or riot (f) loss damage or delay caused by Consignee not accepting delivery.

12. The sender will be liable for all charges for carriage or otherwise including the detention of trucks road vehicles or sheets before during or after transit without prejudice to the Company's rights against the Consignee or other person.

13. The charges for traffic that loses weight through drainage evaporation or any cause beyond the Company's control shall be calculated upon the weight of the goods when received by the Company.

14. The conditions and regulations set out in the Company's Rate Books applicable to the goods carried shall be deemed to be incorporated herein.

15. The Company's servants have no authority to vary this Contract.

NOTICE.

The Company give notice that they do not, except upon special conditions, undertake the carriage of gunpowder, matches, aquafortis, oil of vitriol, or other dangerous articles; neither will they under any circumstances be liable for the loss of any such article, but all senders thereof will be held accountable for any damage arising thereto or therefrom, and whether to other goods or property of the Company or of any other persons. Senders are subject to a penalty unless the nature of the contents be declared and distinctly marked on the outside of the package containing the same.

BYE-LAWS AND REGULATIONS.

MADE by the X. Y. RAILWAY COMPANY (hereinafter referred to as "the Company") with the approval of the Board of Trade :

For regulating the travelling upon and using of the Company's railways (hereinafter referred to as "the railway"), which expression means and includes all railways, works and premises belonging to or leased to the Company, and with respect to which the Company have power to make bye-laws and regulations, and also all and each of the works by their special Acts authorised to be constructed.

Also for maintaining order in and regulating the use of the Company's railway stations and the approaches thereto, and for other purposes with respect to which the Company have power to make bye-laws.

1. Any person doing anything prohibited by or otherwise offending against any of the following bye-laws and regulations numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, and 22 respectively, shall be liable for every such offence to a penalty not exceeding 40s. for a first offence, and not exceeding 5*l.* for any subsequent offence ; and any person doing anything prohibited by or otherwise offending against either of the following bye-laws and regulations numbered 15 and 17 respectively, shall be liable for every such offence to a penalty not exceeding 5*l.*

2. No person shall enter any carriage or vehicle using the railway, for the purpose of travelling, unless and until he or someone on his behalf shall have obtained from the Company, or from some other company or person duly authorised in that behalf by the Company, a ticket entitling him to travel therein. Any person infringing or not observing this bye-law and regulation, and failing to leave the carriage or vehicle immediately on request by any duly authorised servant or agent of the Company, may be removed therefrom by or under the direction of such servant or agent.

3. At all intermediate stations fares will be received and tickets issued conditionally only on there being room in the train for which such tickets shall be issued. In case there shall not be sufficient room for all the passengers to or for whom any such tickets shall have been issued,

the holders of such as shall be for the longest distances shall, as far as reasonably practicable, have the preference, and the holders of such as shall be for the same distance shall, as far as reasonably practicable, have priority according to the order in which such tickets shall have been issued, as denoted by the numbers stamped thereon. The Company are not, however, to be deemed to undertake that such order of preference or priority shall be adhered to.

4. When the fare to an intermediate station exceeds the fare to a more distant station, a person shall not for the purpose of travelling to such intermediate station, take or use or attempt to use a ticket for the more distant station, with intent to avoid payment of the additional fare to such intermediate station. The liability to or infliction of any penalty prescribed by Bye-law No. 1 for a breach of this bye-law and regulation shall not, however, prejudice any right of the Company to treat such ticket as forfeited and to recover the full fare for the distance actually travelled by the offender.

5. No person shall alter, deface, or destroy any passenger ticket after it has been issued and whilst it is available for use with intent to enable the Company to be defrauded or prejudiced; or knowingly and wilfully use or attempt to use any passenger ticket which shall have been in any respect materially altered or defaced.

6. No person shall sell or transfer, or attempt to sell or transfer, to any other person any partly used passenger ticket or partly used book of passenger tickets, or any portion separately from the other (whether partly used or not) of any passenger ticket or book of passenger tickets, unless such ticket or book or portion thereof shall at the time of the issuing of the same purport to be transferable.

7. When a carriage or compartment of a carriage contains the full number of passengers which it is constructed to carry, no additional person shall enter or remain therein if requested by any passenger therein or by a guard of the train or any duly authorised servant or agent of the Company not to do so. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and on failure to quit such carriage or compartment immediately on request by any such guard, servant, or agent may, without prejudice to any such penalty, be removed therefrom by or under the direction of such guard, servant, or agent.

8. Except by express permission of a guard of the train, a person of the male sex above, or apparently above, the

age of eight years shall not travel or attempt to travel or remain in any compartment of a carriage marked or notified as being reserved or appropriated for the exclusive use of persons of the female sex. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and on failure to quit such compartment immediately on request by a guard of the train or any duly authorised servant or agent of the Company, may, without prejudice to any such penalty, be removed therefrom by or under the direction of any such guard, servant, or agent.

9. No person, except a servant or agent of the Company in the performance of his duty, shall mount on any railway engine or on the roof of any wagon, carriage, or vehicle using the railway, or travel or attempt to travel on or in any luggage or guard's van or wagon, carriage, or vehicle not provided for conveyance of passengers, or on the step or footboard or any part of any wagon, carriage, or vehicle other than a part provided for the conveyance of passengers. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and in case of non-compliance with the request of a guard of the train or other servant or agent of the Company to desist, may, without prejudice to any such penalty, be forthwith removed from the wagon, carriage, or vehicle, or the Company's premises, by or under the direction of any such guard, servant, or agent.

10. No person, except a servant or agent of the Company in the performance of his duty, shall enter or leave or attempt to enter or leave any carriage or vehicle using the railway whilst such carriage or vehicle is in motion, or open the door, or mount or attempt to mount on the step or footboard of any such carriage or vehicle whilst it is in motion, or otherwise than at the side of the carriage or vehicle adjoining the platform or place appointed for passengers to enter or leave the railway carriages.

11. Except by special permission of the Company, a person suffering from any infectious or contagious disease or disorder shall not enter or remain or be in or upon the Company's premises, or in any carriage using the railway, or travel or attempt to travel on the railway; and the Company may refuse to receive or carry any such person, or to permit any such person to enter, remain, or be in or upon any part of their premises, or in any such carriage, or to travel on the railway. Any person infringing or not observing this bye-law and regulation may, without

prejudice to the penalty prescribed by Bye-law No. 1, be removed from the Company's premises, or from any such carriage, by or under the direction of any servant or agent of the Company, and shall be liable to the Company for the cost of disinfecting the Company's premises and any carriage in which such person shall have been, and to make good any other damage to the property of the Company through the infraction or non-observance of this bye-law as well as to pay such penalty. Any person who has charge of any person so offending, or who aids or assists any such person in so offending, shall be deemed to infringe and offend against this bye-law.

12. A person in a state of intoxication, or otherwise in an unfit or improper condition for being a passenger, or whose dress or clothing might in the opinion of any guard of the train soil or injure the linings or cushions of any carriage, or the dress or clothing of any passenger, shall not enter or remain in or upon any carriage using the railway, or in or upon any part of the Company's premises, or of any approach to any railway station of the Company. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and on failure to quit any such carriage, premises, or approach, immediately upon the request by any servant or agent of the Company, may, without prejudice to any such penalty, be removed therefrom by or under the direction of such servant or agent.

13. No person shall at any time while in or upon any carriage using the railway, or while in or upon any railway station or premises of the Company, or approach to any such station, use any threatening, abusive, indecent, obscene, profane, or offensive language to the annoyance or hindrance of any other person, or behave in a riotous, disorderly, indecent, or offensive manner, to the annoyance or hindrance of any other person, or write, draw, or affix any abusive, indecent, obscene, profane, or offensive word, representation, or characters, or commit any nuisance in, upon, or against any such carriage, station, premises or approach, or molest or wilfully interfere with the comfort or convenience of any passenger or person on the railway. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed in Bye-law No. 1, and in case of failure to quit such carriage, station, premises, or approach immediately upon request by any servant or agent of the Company, may, without prejudice to any such penalty, be removed

therefrom by or under the direction of any such servant or agent.

14. Except by permission of a guard of the train, no person shall take or cause to be taken any dog, bird, or other animal into any passenger carriage; and, notwithstanding any such permission, no person shall cause or allow the same to remain in any such carriage after having been requested not to do so by any passenger therein or by any servant or agent of the Company.

15. No person shall take into, or place, or cause to be placed, or have in or upon any carriage or vehicle using the railway, or into, in, or upon the Company's premises, or any approach to any station of the Company, any loaded firearm, loaded gun, or loaded weapon of any kind; nor shall any person, except by permission in writing of an officer of the Company duly authorised in that behalf, take into or place, or cause to be placed, in or upon any such carriage or vehicle as aforesaid, or into, in, or upon any part of the Company's premises, or of any approach to any station of the Company, any cylinder, tube or receptacle, containing any inflammable, explosive, or corrosive gas, spirit, or liquid. But nothing in this bye-law shall apply to small quantities of spirit or liquid carried for the personal use of such person, and not for the purpose of trade or business, provided that all due precautions are taken for the prevention of accident or injury therefrom.

16. No person shall smoke in any railway carriage or compartment thereof not specially provided for smoking; or in or upon any part of the Company's premises where smoking is expressly prohibited by the Company; and no person shall smoke elsewhere within the Company's premises if requested by any servant or agent of the Company not to do so. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1; and any person who persists in so offending after being warned by any passenger or servant or agent of the Company to desist, and fails to quit such carriage, compartment, or place immediately upon request by any servant or agent of the Company, may, without prejudice to any such penalty, be forthwith removed therefrom, or from the Company's premises, by or under the direction of any such servant or agent.

17. No person shall wilfully, wantonly, or maliciously break, cut, scratch, tear, soil, deface, damage, or remove any carriage or vehicle using the railway, or any of the fittings, furniture, decorations, or equipments thereof, or

any notice, number-plate, number, figure, or letter in or on any such carriage or vehicle, or wilfully, wantonly, or maliciously deface or damage any building, or erection or property (whether real or personal) belonging to the Company, or upon the railway, or in any approach to any station of the Company. Any person offending against this bye-law and regulation shall be liable to the Company for the amount of the damage done, as well as to pay the penalty prescribed by Bye-law No. 1.

18. Except by permission of the Company, no person while in or upon any railway station, station-yard, or premises of the Company, or approach to any such station, shall hawk, sell or expose or offer therein for sale any article or goods whatsoever, or tout, ply for, or solicit custom or employment of any description. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and if found so offending after having *once* received warning by any servant or agent of the Company not to do so, may, without prejudice to any such penalty, be forthwith removed from the Company's premises, or any such approach, by or under the direction of any servant or agent of the Company.

19. No person shall enter or remain in or use any railway carriage or any part of the Company's premises, or of any approach to any station of the Company, for the purpose of bookmaking, or betting, or wagering, or agreeing to bet or wager with any other person, or without lawful excuse (the proof whereof shall lie on the person charged) enter, loiter, or remain in or upon any station, station-yard, or approach to any station of the Company, or in or upon any carriage or vehicle upon the railway. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and if found so offending after having *once* received warning by any servant or agent of the Company not to do so, may, without prejudice to any such penalty, be forthwith removed by or under the direction of any servant or agent of the Company.

20. No person shall wantonly, maliciously, or negligently throw or drop from any carriage or vehicle on the railway :

(a) A bottle of any kind ; or

(b) Any article or thing whatsoever capable of injuring, damaging, or endangering, any person or property.

21. Every driver, conductor and person in charge of any omnibus, cab, carriage, wagon, or vehicle shall at all times,

while at, in, or upon any railway station or station-yard, or approach to any station of the Company, conduct himself in an orderly manner, and obey every reasonable direction of any duly authorised servant or agent of the Company.

22. No person shall spit upon the floor, or upon any part of any carriage, using or being on the railway, or upon the platform at any station of the Company, or upon the floor, side, or wall of any hall, office, waiting-room, refreshment-room, public room, or public passage at any station of the Company. Any person infringing or not observing this bye-law and regulation shall be liable to the penalty prescribed by Bye-law No. 1, and in case of non-compliance with the request of any servant or agent of the Company to desist may, without prejudice to any such penalty, be forthwith removed from the Company's premises by or under the direction of any such servant or agent.

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